FEDERAL REGISTER

Vol. 89 Wednesday,
No. 60 March 27, 2024

Pages 21177–21430

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 89 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–09512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 89, No. 60

Wednesday, March 27, 2024

Separate Parts In This Issue

Part II
Presidential Documents, 21425–21427, 21429

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
10713.....21177

Administrative Orders:
Notices:
Notice of March 26, 2024 21427
Notice of March 26, 2024 21429

14 CFR
39 (4 documents) 21179, 21181, 21190, 21196

16 CFR

Proposed Rules:
464.....21216

20 CFR
416.....21199

26 CFR
1.....21211
53.....21211

33 CFR
165.....21211

40 CFR

Proposed Rules:
52.....21222

48 CFR

Proposed Rules:
552.....21230
570.....21230

50 CFR
622 (2 documents) 21213, 21214
679.....21215

Federal Register
Vol. 89, No. 60
Wednesday, March 27, 2024

Presidential Documents

Title 3—

The President

Proclamation 10713 of March 22, 2024

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2024

By the President of the United States of America

A Proclamation

On this day more than 200 years ago, revolutionaries throughout Greece rose up for the cause of freedom and declared their independence from the Ottoman Empire. Today, we honor the legacy of these courageous Greek women and men and rededicate ourselves to the cause of liberty and democracy for all.

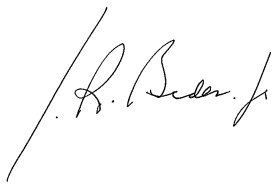
Throughout our shared history, the people of Greece and the United States have been bound by this common belief—the power to shape our destiny should rest in the hands of ''we the people.'' Generation after generation, Americans and Greeks have come together to make those words a reality. We saw it during World War II, when our nations both fought the forces of fascism. We saw it during the Cold War, when our people stood united to prevail against communism. We see it today, as Greece and America stand together alongside a coalition of more than 50 nations to support the brave people of Ukraine as they fight for the same values those Greek revolutionaries did more than 200 years ago: liberty, freedom, and sovereignty.

Today, the partnership, alliance, and friendship shared by Greece and the United States is stronger than ever before—due in large part to the culture, courage, and character of the Greek American community. From standing up for social justice and advancing civil rights to striving to make our Nation freer and fairer, Greek Americans have pushed our country forward, fanning the flame of liberty that first sparked in Athens thousands of years ago. Throughout my career, I have been lucky to see this heart, hope, and commitment up close, and I have drawn lifelong inspiration from Greek American friends, families, leaders, and political mentors.

Today and every day, let us celebrate the unbreakable bonds of friendship shared by the United States and the Hellenic Republic. Let us continue to draw strength from the ideas put forth and the example set by our two countries. Guided by our highest hopes and ideals, let us recommit to preserving, defending, and protecting democracy—together.

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 March 25, 2024, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of March, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2024–06658
Filed 3–26–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 89, No. 60
Wednesday, March 27, 2024

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1880; Project Identifier MCAI–2023–00587–T; Amendment 39–22690; AD 2024–04–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by damage found on two power-feeder harnesses on three airplanes due to chafing with wheel bins. An investigation found that the power-feeder harnesses were not adequately supported to protect from chafing due to vibration. This AD requires modifying the variable frequency generator (VFG) power-feeder harness routing, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 1, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 1, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1880; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Transport Canada material incorporated by reference in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- For service information incorporated by reference in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450–476–7676; email *a220_crc@abc.airbus;* website *a220world.airbus.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1880.

FOR FURTHER INFORMATION CONTACT: William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on September 14, 2023 (88 FR 63034). The NPRM was prompted by AD CF–2023–24, dated April 6, 2023, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2023–24) (also referred to as the MCAI). The MCAI states that two VFG power-feeder harnesses were found damaged due to chafing with wheel bins during maintenance in service on three airplanes. An investigation found that the power-feeder harnesses were not adequately supported to protect from chafing due to vibration.

In the NPRM, the FAA proposed to require modifying the VFG power-feeder harness routing, as specified in Transport Canada AD CF–2023–24. The FAA is issuing this AD to prevent damage to VFG power-feeder harnesses from chafing due to vibration. The unsafe condition, if not addressed, could lead to a loss of generated power from both VFGs, or to a fire in the case of flammable fluid contact with arcing wires.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1880.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Delta Air Lines (DAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Provide Grace Period

DAL requested the FAA to provide a 30- to 60-day grace period to allow adequate planning for completion of the modification at a maintenance station. DAL stated that some of its fleet of affected airplanes are already beyond the time allotted by Transport Canada AD CF–2023–24. After initiating the incorporation of the service bulletin, DAL discovered numerous issues and worked with Airbus to resolve those issues. (Some of those issues are discussed below.) As a result, DAL reports that it has been unable to complete the modification on its fleet, and, as those airplanes continue to accumulate flight cycles, many DAL airplanes would be grounded when the AD becomes effective if no grace period is allowed.

The FAR

A does not agree with the requested change. The manufacturer has established the compliance time through risk assessment analysis. Unilateral addition of compliance time increases the risk. However, the FAA will consider requests to approve an extension of the compliance time as an AMOC (alternative method of compliance) to address airplanes that have already reached the limit, if sufficient data are submitted to

substantiate that the change would provide an acceptable level of safety. No change has been made to this AD in response to this request.

Request To Correct Part Identifying Information

DAL discovered the following discrepancies in the service information referenced in Transport Canada AD CF–2023–24 (Airbus Canada Limited Partnership Service Bulletin BD500–534101, Issue 007, dated October 2, 2020).

- Steps 3.7.4.1 and 3.7.4.2 specify installing and torquing screws with the incorrect item number (14). Figure 6 correctly shows this screw as item (18).
- Step 3.7.7 specifies installing harnesses with the correct part numbers CPYTG2039 and CPYTH2041. Step 3.7.7.1 incorrectly specifies installing harnesses with part numbers CPWTG2032 and CPWTH2034.

The FAA acknowledges these errors and has added paragraphs (h)(3) and (4) of this AD to specify the correct information.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2023–24 specifies procedures for modifying the VFG power-feeder harness routing, including a general visual inspection for damage at the intersection of the VFG power-feeder harnesses and the surface of the wheel bins, and corrective actions including obtaining and following repair instructions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 16 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 51 work-hours × $85 per hour = Up to $4,335	Up to $3,538	Up to $7,873	Up to $125,968.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–04–11 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22690; Docket No. FAA–2023–1880; Project Identifier MCAI–2023–00587–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 1, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–24, dated April 6, 2023 (Transport Canada AD CF–2023–24).

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by damage found on two variable frequency generator (VFG) power-feeder harnesses on three airplanes due to chafing with wheel bins. An investigation found that the power-feeder harnesses were not adequately supported to protect from chafing due to vibration. The FAA is issuing this AD to prevent damage to VFG power-feeder harnesses from chafing due to vibration. The unsafe condition, if not addressed, could lead to a loss of generated power from both VFGs, or to a fire in the case of flammable fluid contact with arcing wires.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–24.

(h) Exceptions to Transport Canada AD CF–2023–24

(1) Where Transport Canada AD CF–2023–24 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2023–24 refers to ''hours air time,'' this AD requires replacing those words with ''flight hours.''

(3) Where the service information specified in Transport Canada AD CF–2023–24, in steps 3.7.4.1 and 3.7.4.2, specifies using ''screws (14),'' this AD requires replacing those words with ''screws (18).''

(4) Where the service information specified in Transport Canada AD CF–2023–24, in step 3.7.7.1, specifies installing ''harnesses CPWTG2032 and CPWTH2034,'' this AD requires replacing those words with ''harnesses CPYTG2039 and CPYTH2041.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* 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 responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) 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, International Validation Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact William Reisenauer, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–24, dated April 6, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–24, contact Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca.* You may find this Transport Canada AD on the Transport Canada website at *tc.canada.ca/en/aviation.*

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.*

Issued on February 27, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06477 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2401; Project Identifier AD–2023–01278–E; Amendment 39–22703; AD 2024–05–11]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–19–15 for certain International Aero Engines, LLC (IAE LLC) Model PW1100G series engines; and AD 2023–16–07 for certain IAE LLC Model PW1100G series engines and PW1400G series engines. AD 2022–19–15 required an angled ultrasonic inspection (AUSI) of the high-pressure turbine (HPT) 1st-stage disk and HPT 2nd-stage disk, and replacement, if necessary. AD 2023–16–07 required an AUSI of the HPT 1st-stage hub (also known as the HPT 1st-stage disk) and HPT 2nd-stage hub (also known as the HPT 2nd-stage disk) for cracks, and replacement, if necessary, which is terminating action for AD 2022–19–15. This AD was prompted by an investigation that determined an increased risk of powdered metal anomalies for all powdered metal parts in certain powdered metal production campaigns, which are susceptible to failure significantly earlier than previously determined. This AD retains the AUSI requirement for certain HPT 1st-stage and HPT 2nd-stage hubs from AD 2023–16–07. This AD requires performing an AUSI of the HPT 1st-stage hub, HPT 2nd-stage hub, high-pressure compressor (HPC) 7th-stage integrally bladed rotor (IBR–7), and HPC 8th-stage integrally bladed rotor (IBR–8) for cracks, and replacing if necessary. This AD also requires accelerated replacement of the HPC IBR–7, HPC IBR–8, HPC rear hub, HPT 1st-stage hub, and HPT 2nd-stage hub. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 11, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 28, 2023 (88 FR 56999, August 22, 2023).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 7, 2022 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2401; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Pratt & Whitney (PW) service information that is incorporated by reference, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*
- You may view this service information that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information

on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2401.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (referred to herein as the NPRM) to amend 14 CFR part 39 to supersede AD 2022–19–15, Amendment 39–22184 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)) (AD 2022–19–15); and AD 2023–16–07, Amendment 39–22526 (88 FR 56999, August 22, 2023) (AD 2023–16–07). AD 2022–19–15 applied to certain IAE LLC Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM engines. AD 2023–16–07 applied to certain IAE LLC Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G–JM, PW1127G1–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, PW1133GA–JM, PW1428G–JM, PW1428GA–JM, PW1428GH–JM, PW1431G–JM, PW1431GA–JM, and PW1431GH–JM engines. The NPRM published in the **Federal Register** on December 28, 2023 (88 FR 89627). The NPRM was prompted by manufacturer analysis of an HPC IBR–7 failure that determined it was caused by a powdered metal anomaly that is similar in nature to the anomalies outlined in AD 2022–19–15. The analysis concluded that there is an increased risk of failure for additional powdered metal parts in certain powdered metal production campaigns, including the HPC IBR–7 and HPC IBR–8, and that all affected parts are susceptible to failure significantly earlier than previously determined. The condition, if not addressed, could result in uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

To address the unsafe condition, the FAA issued an NPRM (Docket No. FAA–2023–2237; Project Identifier AD–2023–01057–E) (referred to herein as the previous NPRM) to supersede AD 2022–19–15 and AD 2023–16–07, which was published in the **Federal Register** on December 12, 2023 (88 FR 86088). However, after the previous NPRM was issued, the FAA received information from PW that an error was inadvertently included in the previous NPRM's compliance times for some of the HPT 1st-stage and 2nd-stage hubs, which would have required removal significantly later than necessary. Due to the need to shorten the removal timeframe, the FAA determined it was necessary to withdraw the previous NPRM and issue the NPRM for the unsafe condition with the correct compliance times.

In the NPRM, the FAA proposed to continue to require performing an AUSI of the HPT 1st-stage hub and HPT 2nd-stage hub and replacing as necessary. The NPRM proposed to require performing an AUSI of the HPC IBR–7 and HPC IBR–8 for cracks and replacing as necessary. The NPRM also proposed to require accelerated replacement of the HPC IBR–7, HPC IBR–8, HPC rear hub, HPT 1st-stage hub, HPT 1st-stage air seal, HPT 1st-stage blade retaining plate, HPT 2nd-stage hub, HPT 2nd-stage blade retaining plate, and HPT 2nd-stage rear seal. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from 14 commenters, including the Air Line Pilots Association, International (ALPA); Air New Zealand; All Nippon Airways CO., LTD. (ANA); Delta Air Lines, Inc. (DAL); Hawaiian Airlines; Hong Kong Express Airways Limited (HK Express); InterGlobe Aviation Limited (IndiGo); JetBlue Airways (JetBlue); Lufthansa Group PW1100G–JM Operators: Lufthansa, SWISS International, Austrian, Lufthansa Cityline (Lufthansa Group); Lufthansa Technik AG; MTU Maintenance Hannover GmbH; PW; United Airlines; and Vietnam Airlines JSC. ALPA urged the manufacturer to develop measures to minimize the operational impact these inspections will have on operators but supported the proposed AD without change. Thirteen commenters requested changes to the proposed AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update Service Information

Three commenters, Delta, JetBlue, and Lufthansa Technik AG requested that the FAA revise paragraphs (h)(2), (h)(6), and (m)(3)(ii) of the proposed AD to refer to PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue 002, dated December 12, 2023, rather than PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue 001, dated November 3, 2023. Lufthansa Technik AG noted that it would be beneficial to use the latest SB revision in sections (h), (i), and (j) of the proposed AD.

The FAA agrees. PW Alert Service Bulletin (ASB) PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, dated December 12, 2023, adds alternative methods of AUSI compliance to the Compliance section, adds service information to the References section, and removes unnecessary steps from the Accomplishment Instructions. The FAA revised this AD to refer to PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, dated December 12, 2023. The FAA also revised paragraph (j), Credit for Previous Actions, of this AD to allow credit for certain actions performed in accordance with PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 001, dated November 3, 2023.

Request To Add Service Information

One commenter, Lufthansa Technik AG, requested the addition of the following documents to the Related Service Information Under 1 CFR part 51 paragraph of the NPRM:

- Special Instruction (SI) 46F–23A, dated April 4, 2023, which provides instructions to inspect IBR–7 parts;
- SI 47F–23A, dated April 4, 2023, which provides instructions to inspect IBR–8 parts; and
- SI 169F–23B, dated October 11, 2023, and previous, which provides a procedure to inspect all affected hardware in-shop.

Lufthansa Technik AG noted that SI 169F–23B should be added to the proposed AD to ensure that credit can be taken from last accomplishment of this SI.

The FAA disagrees. The Related Service Information Under 1 CFR part 51 paragraph contains service information that is incorporated by reference in this AD, and the above-referenced service information is not incorporated by reference. The FAA did not change this final rule as a result of this comment.

Request To Allow Future Revisions of Service Information

Three commenters, ANA, Hawaiian Airlines, and HK Express Airways requested the FAA add ''or later'' to SI No. 222F–23 in the AD or to consider not requiring a specific SI No. 222F–23 revision. The commenters noted that this SI will be revised periodically and suggested that the later revisions should also be exempt from the proposed AD. One commenter, ANA, also requested that the FAA add the phrase ''or later

revision'' to each service information (Service Bulletin and PW Special Instruction) stated in paragraph (m) of the proposed AD.

The FAA disagrees with adding ''or later'' or ''or later revision'' for service information incorporated by reference in this AD. Future revisions of the service information have not yet been published by the manufacturer or reviewed by the FAA, and therefore cannot be approved as required service information. A request for an alternative method of compliance (AMOC) can be submitted to the FAA in accordance with the requirements of paragraph (k) of this AD if future revisions of the service information referenced in this AD are published. Additionally, if future revisions of the service information are published by the manufacturer and approved by the FAA, the FAA may consider further rulemaking. The FAA did not change this AD as a result of these comments.

Request To Exclude Unaffected Parts

Eleven commenters, ANA, DAL, Hawaiian Airlines, HK Express Airways, IndiGo, JetBlue, Lufthansa Group, Lufthansa Technik AG, MTU Maintenance Hannover GmbH, PW, and United Airlines, recommended the FAA exempt the HPC IBR–7, HPC IBR–8, HPC Rear Hub, HPT 1st stage hub, and HPT 2nd stage hub serial numbers listed in Tables 1, 2, and 3 of PW SI No. 222F–23 from the requirements set forth in the proposed AD. PW explained that SI No. 222F–23 identifies specific part numbers and serial numbers that were manufactured outside the affected population of material manufactured from powdered metal addressed by the proposed AD. PW requested modifying the ''Applicability'' section of the proposed AD to exclude parts which are not in the affected population.

The FAA agrees. The FAA will revise paragraph (c), Applicability, of this AD to reference Tables 1, 2, and 3 of PW SI No. 222F–23, Revision A, dated February 13, 2024, which specifies part numbers and serial numbers verified as manufactured from powdered metal campaigns produced prior to November 1, 2015, or after September 1, 2021, and which are therefore outside the population of material manufactured from powdered metal addressed by this AD. This change in the applicability reduces the affected part numbers and serial numbers.

Request Clarification on IBR–8 Part Numbers

Lufthansa Technik AG commented that two IBR–8 P/Ns, 30G3808 and 30G6308, are listed in the Illustrated Parts Catalog and in the airworthiness limitations, but not in the proposed AD. The commenter asked for clarification that these part numbers do not require AUSI and have no additional part replacement but are not allowed for reinstallation in accordance with paragraph (i)(5) of the proposed AD. The commenter suggested this could be due to low life-limited part life.

For clarity, the FAA did not address HPC IBR–8 having P/N 30G3808 and 30G6308 in this AD because the FAA has determined that those parts are either retired, out of service, or have airworthiness limitations that are more restrictive than the requirements of this AD. The FAA did not change this AD as a result of this comment.

Request To Modify Paragraph (g) of the Proposed AD To Include Certain Part Numbers

Lufthansa Technik AG requested that the FAA review the inclusion of all four affected HPT Stg 1 and Stg 2 part numbers in paragraphs (g)(1) and (2) of the proposed AD for completeness of retaining the requirements of AD 2023–16–07 with no change.

The FAA disagrees. Paragraph (g), Retained Inspections from AD 2023–16–07, With No Changes, of this AD applies to certain part and serial numbers as specified. The FAA did not change this AD as a result of this comment.

Request To Modify the Compliance Language in Paragraph (g) of the Proposed AD

One commenter, ANA, requested to change the required action specified in paragraph (g) of the proposed AD from ''perform an AUSI of the affected parts within 30 days,'' to ''remove the affected engine from service within 30 days, and thereafter perform an AUSI of the affected part before release to service.''

The FAA disagrees. The commenter provided no justification for the request, and the FAA has determined that this AD as written accomplishes the same result requested by the commenter. The FAA did not change this AD as a result of this comment.

Request To Remove References to Certain Parts

Two commenters, Air New Zealand and PW, observed that Table 3 of the proposed AD includes a reference to components that are not affected by the powdered metal issue and are not referenced in PW SB PW1000G–C–72–00–0224 and PW1000G–C–72–00–0225. Air New Zealand suggested that including these in the proposed AD would create confusion and unnecessary complexity when processing and showing compliance. PW noted that the proposed AD would not require accelerated replacement of HPT 1st-stage front air seal, HPT 2nd-stage rear air seal, HPT 1st-stage blade retaining plate, and HPT 2nd-stage blade retaining plate, and further noted that these parts would be automatically replaced with incorporation of the Block D 1st and 2nd stage turbine disks. Air New Zealand requested the removal of the references to the HPT 1&2 air seals and the HPT Stage 1 & 2 retaining plates.

The FAA agrees. The FAA will remove the references to HPT 1st-stage front air seal, HPT 2nd-stage rear air seal, HPT 1st-stage blade retaining plate, and HPT 2nd-stage blade retaining plate from this AD.

Request To Include Calculation for Mixed Model Management

Three commenters, ANA, Lufthansa Group, and Lufthansa Technik AG, observed that a mixed model management calculation as defined in PW ASB PW1000G–C–72–00–0224–00A–930A–D and PW ASB PW1000G–C–72–00–0225–00A–930A–D is not mentioned in the proposed AD. Lufthansa Technik AG suggested that this calculation is also referenced in SIL 17. Lufthansa Group noted that, without a stated reference to the mixed model management calculation, it is possible that engines operated at any time at the higher thrust rating must be treated as such. The commenters requested that the FAA state in the proposed AD that mixed model management calculation can be applied to address parts that have operated in both Group 1 and Group 2 engines.

The FAA agrees. The FAA will revise paragraph (h), New Required Actions, of this AD to address the calculation of cyclic limits for part replacement and AUSI compliance times for parts that have been installed in a Group 1 and Group 2 configuration as defined in the note to Table 3 of the compliance paragraph of PW ASB PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001 and PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002. The FAA has not reviewed SIL 17 and will not reference this service information in this AD.

Request To Add a Cyclic Limit to Paragraph (h)(1) of the Proposed AD

One commenter, Lufthansa Technik AG, requested the FAA add a cyclic limit to paragraph (h)(1) of the proposed AD. The commenter noted that all affected hardware is covered by the 100-flight cycle (FC) timeframe in paragraph (h)(9) of the proposed AD. The

commenter suggested that, since there are other unrelated issues in the HPC, and as there is no cyclic limitation planned for the AUSI of the HPC parts, the FAA exclude the requirement to perform an AUSI in accordance with paragraph (h)(1) of the proposed AD below 500 FCs since the last AUSI or since new, unless the HPC rotor is disassembled. The commenter explained that this would remove the need to inspect parts that were recently installed but removed for access.

The FAA disagrees. The FAA cannot account for all circumstances that would require an engine shop visit. Unusual engine shop visit circumstances may be considered through the provisions of paragraph (k), Alternative Methods of Compliance, of this AD. The FAA did not change this AD as a result of this comment.

Request To Clarify Discrepancy in Compliance Times Between the Proposed AD and the PW ASB

Two commenters, DAL and IndiGo, noted a discrepancy between the compliance times in the proposed AD and those in the PW ASBs. IndiGo requested that the FAA clarify if the compliance timeline in the proposed AD supersedes the compliance timeline in the PW ASBs, and if the operators can wait for the proposed AD to be issued and follow the effective date stated in the proposed AD. DAL requested that the FAA add a paragraph or revise paragraph (h)(2) to address the 100–FC drawdown periods in the proposed AD and the discrepancy between the compliance times of the AD and the PW ASBs.

The FAA disagrees with adding a paragraph. Operators are required to comply within the compliance times specified in this AD. However, how an operator reacts to recommended actions from the design approval holder (DAH) should be spelled out in their approved maintenance program and is not governed by this AD. The FAA did not change this AD as a result of this comment.

Request To Adjust Compliance Time To Account for Cycle Count

One commenter, Vietnam Airlines, observed that the drawdown cycles for mandated actions (such as part replacement or inspection) shall be contingent upon the cycle count surpassing the compliance threshold outlined in Table 1 to Paragraph (h)(2) and Table 2 to Paragraph (h)(3) of the proposed AD. The commenter suggested that there should be distinctions in treatment between an engine exceeding the threshold by 1,000 cycles and one exceeding the threshold by 200 cycles. Should the former exhibit a drawdown period of 100 cycles, the commenter recommended that the latter be allocated a longer period for compliance.

The FAA disagrees. The FAA determined that a tiered drawdown is not necessary because all parts exceeding the compliance time or cycle limit stated in Table 1 to paragraph (h)(2) and Table 2 to paragraph (h)(3) of this AD must be removed within 100 FCs after the effective date of this AD. The FAA did not change this AD as a result of this comment.

Request To Include Life Reduction for Certain HPC Rear Hub

One commenter, ANA, noted that the compliance times for HPC rear hub having P/N 30G4008 are specified in ASB PW1000G–C–72–00–0224–00A–930A–D, but they are not included in Table 3 of the proposed AD. Therefore, the commenter observed, an engine may be used beyond the compliance times specified in ASB PW1000G–C–72–00–0224–00A–930A–D. ANA requested that the proposed AD be revised to include the compliance times for P/N 30G4008 specified in ASB PW1000G–C–72–00–0224–00A–930A–D.

The FAA disagrees. This AD requires the removal of HPC rear hub having P/N 30G4008 at either the next HPC engine shop visit or the next HPT engine shop visit, whichever occurs first. The FAA determined that it is not necessary to specify a compliance time for HPC rear hub having P/N 30G4008 due to the cycle limits for the associated HPC and HPT parts. The FAA did not change this AD as a result of this comment.

Request To Change ''Crack'' to ''Defect'' in Paragraph (h)(8) of the Proposed AD

One commenter, Lufthansa Technik AG, observed that paragraph (h)(8) of the proposed AD requires to remove only parts found with a crack. The commenter stated that due to AUSI procedure, it cannot be determined if it is a crack or just an anomaly. Therefore, the commenter requested that the FAA change the wording so that all parts with defects will be removed from service.

The FAA partially agrees. The FAA does not agree with the wording proposed by the commenter. The FAA agrees to meet the commenter's intent by changing the wording of paragraph (h)(9) of this AD from ''if any crack is found,'' to ''if any crack indication is found.''

Request To Include Reference to New Parts

One commenter, Lufthansa Technik AG, requested that the FAA change paragraph (h)(9) of the proposed AD to read ''[. . .] 100 FCs or less since the last AUSI OR NEW, (re-)inspection [. . .].'' The commenter explained that this would allow also counting from reinstallation of new hardware (where it cannot be determined if the AUSI was performed during production at OEM).

The FAA disagrees. Paragraph (h)(10) of this AD applies to repetitive inspections of affected parts installed within the last 100 FCs. Parts that are not included in paragraph (c), Applicability, of this AD are not subject to the repetitive AUSI requirement. The FAA did not change this AD as a result of this comment.

Request To Revise Heading of Table 1 to Paragraph (h)(2) of the Proposed AD

One commenter, Lufthansa Technik AG, noted that it would avoid confusion to reference HPT hub stage 1 and 2 only in the heading of Table 1 to (h)(2). The commenter requested that the FAA include the part names in the header of the table.

The FAA disagrees. The FAA has determined that including the part names in the header is not necessary because paragraph (h)(2) specifies the parts and part numbers subject to the compliance time specified in Table 1 to Paragraph (h)(2) of this AD. The FAA did not change this AD as a result of this comment.

Request To Reference AUSI Performed in Service in Table 1 to (h)(2) of the Proposed AD

One commenter, Lufthansa Technik AG, suggested that the new production parts inspection regime was updated and that Table 1 to (h)(2) of the proposed AD is not covering this AUSI inspection at production. The commenter requested that the second column of Table 1 to (h)(2) of the proposed AD be revised to state that this reflects only ''AUSI performed in service prior to the effective date of this AD.''

The FAA disagrees. However, the FAA has updated paragraph (c), Applicability, of this AD to exempt serial numbers listed in Tables 1, 2, and 3 of SI 222F–23, Revision A, which includes parts subject to AUSI at production.

Request To Add Airworthiness Limitation to Table 2 to Paragraph (h)(3) of the Proposed AD

One commenter, Lufthansa Technik AG, noted that in Table 2 to paragraph

(h)(3) of the proposed AD, for Group 1 engines, the 1st-Stage Hub P/N 30G4201 or 30G6201 with AUSI performed refers to 3,800 FCs since the last AUSI. The commenter also noted that for Group 2 engines, the 1st-Stage Hub P/N 30G4201 or 30G6201 with AUSI performed refers to 2,800 FCs since the last AUSI. The commenter observed that the part needs removal within the airworthiness limitation. The commenter requested that the FAA add a statement similar to the 2nd-stage hubs.

The FAA disagrees. The FAA has determined that adding such a statement is unnecessary because the existing airworthiness limitations are more restrictive. The FAA did not change this AD as a result of this comment.

Request To Make Changes to Tables

Three commenters, HK Express Airways, JetBlue, and Lufthansa Technik AG, expressed that the lack of borderlines in Table 2 for paragraph (h)(3) and Table 3 for paragraph (h)(4) of the proposed AD is confusing. Lufthansa Technik AG notes that on the first look, it seems that the compliance time for part removal at next HPT shop visit is applicable to one row only, but in fact should be applicable for all parts listed below. The commenters requested that the FAA complete the engine group and compliance time boxes for each line item listed in Table 2 and Table 3 of the proposed AD.

The FAA agrees. The FAA has revised Table 2 to paragraph (h)(3) and Table 3 to paragraph (h)(4) of this AD to complete the engine group and compliance time columns for each line item.

Request To Provide Additional Cycles for Alternate Climb Operations

One commenter, JetBlue, stated that JetBlue has been operating with the Alternate Climb modification on the fleet. The commenter explained that the Alternate Climb modification is performed pre-delivery and decreases work/stress on the engine during the entire climb duration, which effectively alleviates stress/fatigue. The commenter requested that the FAA analyze the data to check the feasibility of providing additional cycles for the Alternate Climb modification to meet the proposed AD timelines.

The FAA disagrees. Operators can submit a request for an AMOC to the FAA in accordance with the requirements of paragraph (k) of this AD with the data that shows the modification provides an acceptable level of safety. The FAA did not change this AD in response to this comment.

Request To Modify Definition for Part Eligible for Installation

One commenter, HK Express Airways, noted that PW SI 222F–23 identifies parts exempted from repetitive AUSI and early retirement carrying the same part number, and the commenter observed that the proposed AD did not mention this SI in paragraph (i). HK Express Airways requested adding reference to SI 222F–23 to the definition of ''part eligible for installation,'' so the parts listed in the SI are deemed to be eligible for installation. The commenter also noted that SI 222F–23 will be updated quarterly by PW, therefore the AD should not fix the SI version.

The FAA agrees to revise the definition of ''part eligible for installation'' in paragraph (i) of this AD to reference part serial numbers identified in Tables 1, 2, and 3 of SI 222F–23, Revision A. The FAA does not agree to include an undated reference to SI 222F–23. Future revisions of service information have not yet been published by the manufacturer or reviewed by the FAA, and therefore cannot be approved as required service information. A request for an AMOC can be submitted to the FAA in accordance with paragraph (k) of this AD if future revisions of the service information referenced in this AD are published. Additionally, if future revisions of the service information are published by the manufacturer and approved by the FAA, the FAA may consider further rulemaking.

Request To Clarify if Newly Produced Parts Are Eligible for Installation

Three commenters, DAL, HK Express Airways, and Lufthansa Technik AG, observed that the proposed AD did not address newly produced parts carrying the same part number in the definition of ''part eligible for installation'' in paragraph (i)(5) of the proposed AD. Therefore, the commenters reasoned, the proposed AD does not define installation eligibility for any new/not service run HPC/HPT hardware that is not currently installed on a Group 1 or Group 2 engine. The commenters requested that paragraph (i)(5) of the proposed AD be revised to add installation eligibility for new production parts.

The FAA agrees. If the newly produced parts are manufactured from powdered metal material produced prior to November 1, 2015, or after September 1, 2021, as identified in the original manufacturing records or in Tables 1, 2, and 3 of SI No. 222F–23, Revision A, those parts are not affected by this AD. The FAA revised the definition of ''part eligible for installation'' in paragraph (i)(5) of this AD to reference parts identified as not affected by this AD in paragraph (c)(2) of this AD. Therefore, parts identified in Tables 1, 2, and 3 of SI No. 222F–23, Revision A, will meet the definition of ''part eligible for installation.'' To meet the updated definition of ''part eligible for installation,'' affected parts need to be inspected in accordance with this AD. Unaffected parts can be installed without performing the requirements of this AD.

Request To Clarify Meaning of Induction as Used in Paragraph (i), Definitions, of the Proposed AD

One commenter, ANA, asked the FAA to clarify that the definition of ''induction'' in paragraph (i) of the proposed AD is the timing when the engine disassembly is started. ANA asked the FAA to clarify a particular situation to have a correct understanding. ANA noted that, in terms of paragraph (h)(1) and (2) of the proposed AD, if an engine is already in shop for maintenance involving the separation H-flange or M-flange, then assembly has already been started at the effective date of this AD. The commenter asked if an angled ultrasonic scan inspection should therefore not be performed in this shop visit.

The FAA agrees to clarify. The FAA does not have a set definition for induction. Reference your approved maintenance program to determine what ADs apply to your engines during an engine shop visit. In the example provided, if the engine were already at an engine shop visit on the effective date of this AD, the requirements of paragraphs (h)(1) and (2) would apply at the next engine shop visit after the effective date of this AD. The FAA did not change this AD in response to this comment.

Request To Include 2nd-Stage HPT Retaining Plates in Paragraph (i), Definitions, of the Proposed AD

One commenter, Lufthansa Technik AG, requested that the FAA include 2nd-stage HPT retaining plates in the definition of parts eligible for installation.

The FAA disagrees. The FAA revised this final rule to remove references to HPT retaining plates in response to another comment. The FAA did not change this AD in response to this comment.

Request To Identify Previous AUSI Service Information in Paragraph (j), Credit for Previous Actions, of the Proposed AD

One commenter, Lufthansa Technik AG, observed that, in addition to the credit for paragraphs (g)(1) and (2) of the proposed AD, it should be required to note down which procedures qualify as ''AUSI performed'' for cyclic requirements under paragraphs (h)(2) with table 1 and (h)(8) of the proposed AD to correctly determine the remaining life and if the AUSI was performed prior to AD effectivity. The commenter listed the following service information: For HPT hubs in accordance with (h)(2) and (8) of the proposed AD:

- SI 169F–23;
- SB PW1000G–C–72–00–0188–00A–930A–D, Issue 1 dated September 13, 2021; and
- PW1000G–C–72–00–0188–00A–930A–D, Issue 2 dated July 8, 2022.

For HPC parts in accordance with paragraph (h)(8) of the proposed AD:

- SI 46F–23; and
- SI 47F–23.

The FAA infers that the commenter requested that the FAA add the service information identified to paragraph (j), Credit for Previous Actions, of this AD. The FAA disagrees. PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021, is referenced in paragraph (j), Credit for Previous Actions, of this AD. The FAA revised paragraph (j), Credit for Previous Actions, of this AD to include PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No. 001, dated November 3, 2023, which provides methods for AUSI that may have been previously used, in response to a separate comment. The FAA did not change this AD in response to this comment.

Request To Add Special Flights Permit Paragraph

One commenter, HK Express Airways, noted that according to PW, non-revenue maintenance or check flights are permitted if the aircraft is required to re-locate to base maintenance facilities for storage or engine removal after the compliance time. The commenter requested that the FAA add a paragraph to the proposed AD to clearly state that non-revenue maintenance flights are permitted within the proposed AD.

The FAA disagrees because 14 CFR 39.23 allows for special flight permits unless specified as limited or prohibited in the AD. The FAA did not change this AD in response to this comment.

Additional Change Made to the Applicability

Since the NPRM published, the FAA determined the need to add IAE LLC Models PW1127G1A–JM and PW1127G1B–JM to paragraph (c), Applicability, in this AD. These engine models were recently certificated but are not in production yet. The FAA revised the applicability of this AD to include these additional engine models. None of the engines added to the applicability of this AD are on the U.S. Register. Additional notice and opportunity for public comment before issuing this AD are therefore unnecessary. Since there are no additional engines on the U.S. registry, no changes have been made to the Costs of Compliance paragraph in this final rule.

Updated Service Information for Paragraph (c)(2) of the Applicability

Since the NPRM comment period closed, PW updated SI 222F–23, Revision A, to add additional part numbers and serial numbers verified as manufactured from powdered metal campaigns produced prior to November 1, 2015, or after September 1, 2021, and which are therefore outside the population of material manufactured from powdered metal addressed by this AD. For this reason, the FAA updated paragraph (c)(2) of the Applicability to reference Tables 1, 2, and 3 of PW SI No. 222F–23, Revision B, dated March 1, 2024. This change to the applicability of this AD reduces the affected part numbers and serial numbers.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information:

- PW ASB PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001, dated November 3, 2023, which specifies procedures for performing an AUSI for cracks on affected HPC IBR–7 and HPC IBR–8;
- PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, dated December 12, 2023, which specifies procedures for performing an AUSI for cracks on affected HPT 1st-stage hubs and HPT 2nd-stage hubs;
- PW SI No. 198F–23, dated November 3, 2023, which specifies the list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs, identified by part number and serial number, installed on certain IAE LLC engines;
- PW SI No. 222F–23, Revision B, dated March 1, 2024, which specifies the list of part numbers and serial numbers that were manufactured outside of the affected population of material manufactured from powdered metal;
- PW Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, which was previously approved for incorporation by reference on November 7, 2022 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)). This service information specifies procedures for performing an AUSI for cracks on affected HPT 1st-stage hubs and HPT 2nd-stage hubs; and
- PW SI No. 149F–23, dated August 4, 2023, which was previously approved for incorporation by reference on August 28, 2023 (88 FR 56999, August 22, 2023). This service information specifies the list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs, identified by part number and serial number, installed on certain IAE LLC engines.

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.

Interim Action

The FAA considers this AD to be an interim action. The unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Determination of the Effective Date

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to make rules effective in less than thirty days, upon a finding of ''good cause.'' The FAA has found that the risk to the flying public justifies a shortened effective date for this rule due to powdered metal anomalies in HPT 1st-stage hub, HPT 2nd-stage hub, HPC IBR–7, and HPC IBR–8 that could lead to premature fracture and uncontained failure, which could lead to the release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane. The compliance time for replacement of

certain parts is within 100 flight cycles after the effective date of this AD, which is on average one calendar month of operation. The longer these parts remain in service, the higher the probability of failure. Additionally, the FAA did not receive any adverse comments or useful information about this AD from U.S. operators that necessitates waiting 30 days for this AD to become effective. Accordingly, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Costs of Compliance

The FAA estimates that this AD affects 430 engines installed on airplanes of U.S. registry. The FAA estimates that 366 engines will need replacement of the HPT 1st-stage hub; 351 engines will need replacement of the HPT 2nd-stage hub; 408 engines will need replacement of the HPC IBR–7; 368 engines will need replacement of the HPC IBR–8; and 283 engines will need replacement of the HPC rear hub.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost (average pro-rated cost)	Cost per product	Cost on U.S. operators
AUSI of HPT 1st-stage hub, HPT 2nd-stage hub, HPC IBR–7, and HPC IBR–8 for cracks.	80 work-hours ×$85 per hour = $6,800 ...	$0	$6,800	$2,924,000
Replace HPT 1st-stage hub	10 work-hours ×$85 per hour = $850	56,000	56,850	20,807,100
Replace HPT 2nd-stage hub	10 work-hours ×$85 per hour = $850	62,000	62,850	$22,060,350
Replace HPC IBR–7	10 work-hours ×$85 per hour = $850	82,000	82,850	33,802,800
Replace HPC IBR–8	10 work-hours ×$85 per hour = $850	93,000	93,850	34,536,800
Replace HPC rear hub	10 work-hours ×$85 per hour = $850	132,000	132,850	37,596,550

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–19–15, Amendment 39–22184 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)); and Airworthiness Directive 2023–16–07, Amendment 39–22526 (88 FR 56999, August 22, 2023); and

■ b. Adding the following new airworthiness directive:

2024–05–11 International Aero Engines, LLC: Amendment 39–22703; Docket No. FAA–2023–2401; Project Identifier AD–2023–01278–E.

(a) Effective Date

This airworthiness directive (AD) is effective April 11, 2024.

(b) Affected ADs

(1) This AD replaces AD 2022–19–15, Amendment 39–22184 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)).

(2) This AD replaces AD 2023–16–07, Amendment 39–22526 (88 FR 56999, August 22, 2023) (AD 2023–16–07).

(c) Applicability

(1) This AD applies to International Aero Engines, LLC (IAE LLC) Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G–JM, PW1127G1–JM, PW1127G1A–JM, PW1127G1B–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, PW1133GA–JM, PW1428G–JM, PW1428GA–JM, PW1428GH–JM, PW1431G–JM, PW1431GA–JM, and PW1431GH–JM engines with an installed:

(i) High-pressure compressor (HPC) 7th-stage integrally bladed rotor (IBR–7) having part number (P/N) 30G2307 or 30G4407;

(ii) HPC 8th-stage integrally bladed rotor (IBR–8) having P/N 30G5608, 30G5908, or 30G8908;

(iii) HPC rear hub having P/N 30G4008 or 30G8208;

(iv) High-pressure turbine (HPT) 1st-stage hub having P/N 30G4201, 30G6201, or 30G7301; or

(v) HPT 2nd-stage hub having P/N 30G3902, 30G5502, or 30G6602.

(2) This AD does not apply to parts identified in paragraphs (c)(1)(i) through (v) of this AD if those parts were manufactured from powdered metal material produced prior to November 1, 2015, or after September 1, 2021, as identified by part serial number in Tables 1, 2, and 3 of PW Special Instruction (SI) No. 222F–23, Revision B, dated March 1, 2024 (PW SI No. 222F–23, Revision B) or in the original manufacturing records for the part.

(3) If the original manufacturing records do not identify the production date of the powdered metal used to make the parts identified in paragraphs (c)(1)(i) through (v) of this AD, and the part serial number is not listed in Tables 1, 2, and 3 of PW SI No. 222F–23, Revision B, then the part is subject to the requirements of this AD.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an analysis of an event involving an IAE LLC Model PW1127GA–JM engine, which experienced failure of an HPC IBR–7 that resulted in an engine shutdown and aborted takeoff. The FAA is issuing this AD to prevent failure of the HPT 1st-stage hub, HPT 2nd-stage hub, HPC IBR–7, and HPC IBR–8. The unsafe condition, if not addressed, could result in uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Retained Inspections From AD 2023–16–07, With No Changes

(1) This paragraph restates the requirements of paragraph (g)(1) of AD 2023–16–07. For Group 1 and Group 2 engines with an installed HPT 1st-stage hub having part number (P/N) 30G7301 and a serial number (S/N) listed in Tables 1, 2, 3, or 4 of PW Special Instruction (SI) No. 149F–23, dated August 4, 2023 (PW SI No. 149F–23), within 30 days after August 28, 2023 (the effective date of AD 2023–16–07), perform an AUSI of the HPT 1st-stage hubs for cracks in accordance with the Accomplishment Instructions, paragraph 9.A. or 9.B., as applicable, of Pratt & Whitney (PW) Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022 (PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002).

(2) This paragraph restates the requirements of paragraph (g)(2) of AD 2023–16–07. For Group 1 and Group 2 engines with an installed HPT 2nd-stage hub having P/N 30G6602 and an S/N listed in Tables 1, 2, 3, or 4 of PW SI No. 149F–23, within 30 days after August 28, 2023 (the effective date of AD 2023–16–07), perform an AUSI of the HPT 2nd-stage hubs for cracks in accordance with the Accomplishment Instructions, paragraph 9.C. or 9.D., as applicable, of PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002.

(h) New Required Actions

(1) For Group 1 and Group 2 engines with an affected HPC IBR–7 having P/N 30G2307 or 30G4407, or an affected HPC IBR–8 having P/N 30G5608, 30G5908, or 30G8908, at the next HPC engine shop visit and thereafter at every HPC engine shop visit, perform an angled ultrasonic scan inspection (AUSI) of the affected HPC IBR–7 or HPC IBR–8, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 4.E.(1) or 4.E.(2), of PW Alert Service Bulletin (ASB) PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001, dated November 3, 2023 (PW ASB PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001).

(2) For Group 1 and Group 2 engines with an affected HPT 1st-stage hub having P/N 30G7301 or an HPT 2nd-stage hub having P/N 30G6602, before exceeding the applicable compliance time in Table 1 to paragraph (h)(2) of this AD, except as required by paragraphs (g)(1) and (2) and paragraph (h)(7) of this AD, perform an AUSI of the affected HPT 1st-stage hub or HPT 2nd-stage hub, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 1.D.(7)(a) or 1.D.(7)(b) of PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, dated December 12, 2023 (PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002). Thereafter, repeat the AUSI at the applicable interval in Table 1 to paragraph (h)(2) of this AD.

TABLE 1 TO PARAGRAPH (h)(2)—AUSI COMPLIANCE TIMES

Engine group	AUSI performed prior to effective date of this AD	Compliance time	Repetitive interval
1	No	Before accumulating 3,800 cycles since new (CSN) or within 100 flight cycles (FCs) after the effective date of this AD, whichever occurs later.	Thereafter at each HPT engine shop visit or before exceeding 3,800 FCs from the last AUSI of the affected hub, whichever occurs first.
1	Yes	At the next HPT engine shop visit, not to exceed 3,800 FCs since the previous AUSI, or within 100 FCs after the effective date of this AD, whichever occurs later.	Thereafter at each HPT engine shop visit or before exceeding 3,800 FCs from the last AUSI of the affected hub, whichever occurs first.
2	No	Before accumulating 2,800 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.	Thereafter at each HPT engine shop visit or before exceeding 2,800 FCs from the last angled AUSI of the affected hub, whichever occurs first.
2	Yes	At the next HPT engine shop visit, not to exceed 2,800 FCs since the previous AUSI, or within 100 FCs after the effective date of this AD, whichever occurs later.	Thereafter at each HPT engine shop visit or before exceeding 2,800 FCs from the last AUSI of the affected hub, whichever occurs first.

(3) For Group 1 and Group 2 engines with an affected part listed in Table 2 to paragraph (h)(3) of this AD, at the next HPT engine shop visit not to exceed the applicable cyclic limit specified in Table 2 to paragraph (h)(3) of this AD, or 100 FCs after the effective date of the AD, whichever occurs later, except as required by paragraphs (h)(6) and (8) of this AD, remove the affected part from service and replace with a part eligible for installation.

TABLE 2 TO PARAGRAPH (h)(3)—PART REPLACEMENT COMPLIANCE TIMES

Engine group	AUSI performed prior to effective date of this AD	Part name	Part No.	Cyclic limit
1	Yes	HPT 1st-stage hub	30G4201 or 30G6201.	3,800 FCs since last AUSI.
1	No	HPT 1st-stage hub	30G4201 or 30G6201.	3,800 CSN.
1	Yes	HPT 2nd-stage hub	30G3902 or 30G5502.	3,800 FCs since last AUSI or 7,000 CSN, whichever comes first.

TABLE 2 TO PARAGRAPH (h)(3)—PART REPLACEMENT COMPLIANCE TIMES—Continued

Engine group	AUSI performed prior to effective date of this AD	Part name	Part No.	Cyclic limit
1	No	HPT 2nd-stage hub	30G3902 or 30G5502.	3,800 CSN.
2	Yes	HPT 1st-stage hub	30G4201 or 30G6201.	2,800 FCs since last AUSI.
2	No	HPT 1st-stage hub	30G4201 or 30G6201.	2,800 CSN.
2	Yes	HPT 2nd-stage hub	30G3902 or 30G5502.	2,800 FCs since last AUSI or 5,000 CSN, whichever comes first.
2	No	HPT 2nd-stage hub	30G3902 or 30G5502.	2,800 CSN.

(4) For Group 1 and Group 2 engines with an affected part listed in Table 3 to paragraph (h)(4) of this AD, before exceeding the applicable compliance times specified in Table 3 to paragraph (h)(4) of this AD, remove the affected part from service and replace with a part eligible for installation.

TABLE 3 TO PARAGRAPH (h)(4)—PART REPLACEMENT COMPLIANCE TIMES

Engine group	Part name	Part No.	Compliance time
1 and 2	HPC rear hub	30G4008	At the next HPC shop visit or HPT shop visit, whichever occurs first after the effective date of this AD.
1	HPC rear hub	30G8208	Before accumulating 7,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
1	HPC IBR–7	30G2307 or 30G4407.	Before accumulating 7,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
1	HPC IBR–8	30G5608 or 30G5908 or 30G8908.	Before accumulating 7,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
1	HPT 1st-stage hub	30G7301	Before accumulating 7,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
1	HPT 2nd-stage hub	30G6602	Before accumulating 7,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
2	HPC rear hub	30G8208	Before accumulating 5,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
2	HPC IBR–7	30G2307 or 30G4407.	Before accumulating 5,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
2	HPC IBR–8	30G5608 or 30G5908 or 30G8908.	Before accumulating 5,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
2	HPT 1st-stage hub	30G7301	Before accumulating 5,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.
2	HPT 2nd-stage hub	30G6602	Before accumulating 5,000 CSN or within 100 FCs after the effective date of this AD, whichever occurs later.

(5) For affected parts that have been operated in a Group 1 and Group 2 configuration, calculate part replacement and AUSI times required by paragraphs (h)(2) through (4) using the note to Table 3 of the compliance paragraph of PW ASB PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001 or PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, as applicable, which addresses calculating mixed model cycles.

(6) For Group 1 and Group 2 engines with an installed HPT 1st-stage hub having P/N 30G6201 or an HPT 2nd-stage hub having P/N 30G5502 and an S/N listed in Tables 1, 2, 3, or 4 of PW SI No. 149F–23 that has not had an AUSI performed before the effective date of this AD, before further flight, remove the affected hub from service.

(7) For Group 1 and Group 2 engines with an installed HPT 1st-stage hub having P/N 30G7301 or an HPT 2nd-stage hub having P/N 30G6602 with an S/N listed in Tables 1, 2, 3, or 4 of PW SI No. 198F–23, dated November 3, 2023 (PW SI No. 198F–23), within 100 FC after the effective date of this AD, perform an AUSI of the affected hub for cracks in accordance with the Accomplishment Instructions, paragraph 1.D.(7)(a) or 1.D.(7)(b) of PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002.

(8) For Group 1 and Group 2 engines with an installed HPT 1st-stage hub having P/N 30G6201 or an HPT 2nd-stage hub having P/N 30G5502 with an S/N listed in Tables 1, 2, 3, or 4 of PW SI No. 198F–23, within 100 FC after the effective date of this AD, remove the hub from service and replace with a part eligible for installation.

(9) If any crack indication is found during any AUSI required by this AD, before further flight, remove the affected part from service and replace with a part eligible for installation.

(10) If an affected part has accumulated 100 FCs or less since the last AUSI, reinspection is not required provided that the part was not damaged during removal from the engine.

(i) Definitions

(1) For the purposes of this AD, ''Group 1 engines'' are IAE LLC Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G–JM, PW1127G1–JM, PW1127G1A–JM, PW1127G1B–JM, and PW1127GA–JM engines.

(2) For the purposes of this AD, ''Group 2 engines'' are IAE LLC Model PW1129G–JM, PW1130G–JM, PW1133G–JM, PW1133GA–JM, PW1428G–JM, PW1428GA–JM, PW1428GH–JM, PW1431G–JM, PW1431GA–JM, and PW1431GH–JM engines.

(3) For the purposes of this AD, an ''HPC engine shop visit'' is the induction of an

engine into the shop for maintenance involving the separation of the H-flange.

(4) For the purposes of this AD, an ''HPT engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of the M-flange.

(5) For the purposes of this AD, a ''part eligible for installation'' is:

(i) An HPC IBR–7 having P/N 30G2307 or 30G4407 that has passed the AUSI required by paragraph (h)(1) of this AD or is identified as not affected by this AD in paragraph (c)(2) of this AD, or later approved P/N.

(ii) An HPC IBR–8 having P/N 30G5608, 30G5908, or 30G8908 that has passed the AUSI required by paragraph (h)(1) of this AD or is identified as not affected by this AD in paragraph (c)(2) of this AD, or later approved P/N.

(iii) An HPT 1st-stage hub having P/N 30G7301 that has passed the AUSI required by paragraph (h)(2) of this AD or is identified as not affected by this AD in paragraph (c)(2) of this AD, or later approved P/N.

(iv) An HPT 2nd-stage hub having P/N 30G6602 that has passed the AUSI required by paragraph (h)(2) of this AD or is identified as not affected by this AD in paragraph (c)(2) of this AD, or later approved P/N.

(v) An HPC rear hub having P/N 30G8208 and is identified as not affected by this AD in paragraph (c)(2) of this AD, or later approved P/N.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using PW Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021. This service information is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (h)(2) and (6) of this AD, if those actions were performed before the effective date of this AD using PW Alert Service Bulletin PW ASB PW1000G–C–72–00–0225–00A–930A–D, Issue No: 001, dated November 3, 2023. This service information is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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 AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD.

(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.

(l) Additional Information

(1) For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (m)(6) of this AD.

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 11, 2024.

(i) Pratt & Whitney Alert Service Bulletin PW1000G–C–72–00–0224–00A–930A–D, Issue No: 001, dated November 3, 2023.

(ii) Pratt & Whitney Alert Service Bulletin PW1000G–C–72–00–0225–00A–930A–D, Issue No: 002, dated December 12, 2023.

(iii) Pratt & Whitney Special Instruction No. 198F–23, dated November 3, 2023.

(iv) Pratt & Whitney Special Instruction No. 222F–23, Revision B, dated March 1, 2024.

(4) The following service information was approved for IBR on August 28, 2023 (88 FR 56999, August 22, 2023).

(i) Pratt & Whitney Special Instruction No. 149F–23, dated August 4, 2023.

(ii) [Reserved]

(5) The following service information was approved for IBR on November 7, 2022 (87 FR 59660, October 3, 2022; corrected October 24, 2022 (87 FR 64156)).

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022.

(ii) [Reserved]

(6) For Pratt & Whitney service information that is incorporated by reference, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(7) You may view this service information that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(8) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on March 8, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06419 Filed 3–22–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2523; Project Identifier AD–2023–01086–E; Amendment 39–22709; AD 2024–06–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Pratt & Whitney (PW) Model PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A engines. This AD was prompted by an updated analysis of an event involving an International Aero Engines, LLC (IAE LLC) Model PW1127GA–JM engine, which experienced a high-pressure compressor (HPC) 7th-stage integrally bladed rotor (IBR–7) separation that resulted in an engine shutdown and aborted takeoff. This AD requires performing an angled ultrasonic inspection (AUSI) of certain high-pressure turbine (HPT) 1st-stage hubs, HPT 2nd-stage hubs, and HPC 8th-stage disks for cracks and, depending on the results of the inspections, replacing the HPT 1st-stage hubs, HPT 2nd-stage hubs, or HPC 8th-stage disks. This AD also requires accelerated replacement of certain HPC 7th-stage rotors, HPC 8th-stage disks, HPC rear hubs, HPT 1st-stage hubs, HPT 2nd-stage hubs, HPT 1st-stage air seals, HPT 2nd-stage air seals, HPT 1st-stage blade retaining plates, and HPT 2nd-stage blade retaining plates. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 11, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2523; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Pratt & Whitney service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2523.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain PW Model PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A engines. The NPRM published in the **Federal Register** on January 9, 2024 (89 FR 1038). The NPRM was prompted by an incident involving an Airbus Model A320neo airplane powered by IAE LLC Model PW1127GA–JM engines that experienced a failure of the HPC IBR–7 resulting in an engine shutdown and aborted take-off. Following this event, the manufacturer conducted a records review of production and field-returned parts and re-evaluated their engineering analysis methodology. The new analysis found that the failure of the HPC IBR–7 was caused by a nickel powdered metal anomaly, similar in nature to an anomaly previously observed. The analysis also concluded that there is an increased risk of failure for additional nickel powdered metal parts in certain nickel powdered metal production campaigns, and these parts are susceptible to failure much earlier than previously determined. In the NPRM, the FAA proposed to require performing an AUSI of certain HPT 1st-stage hubs, HPT 2nd-stage hubs, and HPC 8th-stage disks for cracks and, depending on the results of the inspections, replacing the HPT 1st-stage hubs, HPT 2nd-stage hubs, or HPC 8th-stage disks. The FAA also proposed to require accelerated replacement of certain HPC 7th-stage rotors, HPC 8th-stage disks, HPC rear hubs, HPT 1st-stage air seals, HPT 2nd-stage air seals, HPT 1st-stage hubs, HPT 2nd-stage hubs, HPT 1st-stage blade retaining plates, and HPT 2nd-stage blade retaining plates. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from five commenters. The commenters were the Air Line Pilots Association, International (ALPA), Delta Air Lines, Inc. (DAL), Lufthansa Technik AG (Lufthansa), PW, and Transport Canada Civil Aviation (TCCA). ALPA supported the NPRM without change. DAL, Lufthansa, PW, and TCCA requested changes to the proposed AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Unsafe Condition

DAL requested that the FAA update paragraph (e) of the proposed AD or create a new paragraph to clarify why the HPC IBR–7 does not require repetitive AUSIs. Delta noted that the HPC IBR–7 was the part that originally separated during an event outlined in the proposed AD, leading to engine shutdown and aborted takeoff, which prompted this AD.

The FAA disagrees with the request to update paragraph (e) or add a paragraph to the AD that clarifies why there are no repetitive AUSIs for the HPC IBR–7. The AUSI for the HPC IBR–7 was not available when the NPRM was written and to address the unsafe condition quickly, the FAA did not want to delay the issuance of this AD in order to add the AUSI for the HPC IBR–7. Since this AD is considered an interim action, the FAA will consider adding the AUSI for the HPC IBR–7 or other actions in the future. The FAA did not change this AD as a result of this comment.

Request To Update Definition for Parts Eligible for Installation

DAL requested that the FAA update paragraph (i)(3) of the proposed AD to clarify installation eligibility for new/not service run HPC/HPT hardware that is not currently installed on an engine. Delta stated that HPC/HPT hardware scanned at production are scanned per the non-destructive inspection procedure (NDIP) and may not list service bulletin status so clarification is needed to determine hardware eligibility based off service bulletin status as well as NDIP status.

The FAA disagrees with the request to update the definition of parts eligible for installation to include new/not service run parts because new parts inspected at production would not have the NDIP listed in their paperwork. The service documents require the AUSI of new parts prior to installation with no allowance for parts inspected at production. The FAA did not change this AD as a result of this comment.

Request To Update Definition of Engine Shop Visit and HPC Engine Shop Visit

DAL requested that the FAA update the definitions for ''engine shop visit'' and ''HPC engine shop visit'' in paragraph (i)(5) and (6) of the proposed AD to provide clarity and avoid ambiguity. Delta noted that the definition for ''engine shop visit'' includes the term ''pairs'' when defining separation of major mating engine flanges. Delta stated that this does not clearly define what constitutes an ''engine shop visit,'' as the term ''pairs'' may be interpreted as separation of two or more different lettered flanges. Delta also stated that the phrase ''when the HPC rotor assembly is removed from the engine'' used in the definition for an ''HPC engine shop visit'' does not clearly describe the different scenarios that may constitute HPC engine shop visits since the HPC rotor assembly can be at different levels of exposure depending on the shop visit type.

The FAA partially agrees with the request. The FAA agrees to update the definition of an ''HPC shop visit'' in paragraph (i)(6) of this AD to: ''For the purposes of this AD, an 'HPC engine shop visit' is when the HPC rotor assembly is removed from the HPC module.'' The FAA disagrees with the request to update the definition for an ''engine shop visit'' because the definition used in this AD is standard and taken from the World Airlines Technical Operations Glossary. The FAA notes that the term ''pairs'' of major mating engine flanges refers to the mating surfaces on each individual part of the bolted joint.

Request To Include Alert Service Bulletin (ASB) Issue Numbers in Tables

DAL requested that the FAA update Table 1 to Paragraph (g)(3) and Table 2 to Paragraph (g)(7) of the proposed AD to include the issue numbers of the ASBs that are listed in the Applicable (serial number) S/N listing, Applicable service bulletin and the Table S/N is listed in columns. DAL noted that certain ASBs, such as 72–00–0196 Issue 002, were revised to include additional

serial numbers in the effectivity, so different ASB issue numbers contain different serial number effectivity.

The FAA agrees with the request and has updated Table 1 to paragraph (g)(3) and Table 2 to paragraph (g)(7) of this AD to include the issue numbers of the applicable ASBs.

Request To Edit Service Bulletin References

Lufthansa requested that the FAA merge paragraph (g)(1) of the proposed AD with paragraph (g)(4)(i) of the proposed AD and paragraph (g)(2) of the proposed AD with paragraph (g)(4)(ii) of the proposed AD and refer to ASBs PW1000G–A–72–00–0204 and PW1000G–A–72–00–0205, as applicable. Lufthansa noted that all of the ASBs referenced in these paragraphs refer to NDIP–1260 for 8th-stage discs, NDIP–1254 for 1st-stage hubs, and NDIP–1257 for 2nd-stage hubs. Lufthansa also noted that this aligns with the PW ASB set-up, which requires inspections during shop visits in accordance with ASBs PW1000G–A–72–00–0204 and PW1000G–A–72–00–0205 for all less affected hardware and stricter inspections for parts more affected and listed in ASBs PW1000G–A–72–00–0196 and PW1000G–A–72–00–0197 only.

The FAA disagrees with the request to merge steps within paragraph (g) of this AD. The FAA notes that several service information documents are referenced within paragraph (g) of this AD in order to account for both initial AUSI and repetitive AUSIs. The FAA did not change this AD as a result of this comment.

Request To Clarify 100 Flight Cycle Threshold

TCCA requested that the FAA clarify the intention of the condition ''or within 100 FCs after the effective date of this AD'' that is proposed in paragraph (g)(3) of the proposed AD and to clarify if it is related to the intent of paragraph (g)(13) of the proposed AD.

For clarification, the intention of the condition ''or within 100 FCs after the effective date of this AD'' is to provide a grace period for affected parts that are over the cycle limits listed in Table 1 to Paragraph (g)(3) of this AD, and the condition is not related to paragraph (g)(13) of this AD. The FAA did not change this AD as a result of this comment.

Request To Add Definition for Affected Part

TCCA requested that the FAA update the proposed AD by adding a definition for ''affected part'' in order to avoid misinterpretation since there are multiple parts with different part numbers and a subpopulation of part SNs and inspection thresholds involved.

The FAA disagrees with the request to add a definition for ''affected part'' to this AD because the affected parts and part numbers are already specified within paragraph (g) of this AD. The FAA did not change this AD as a result of this comment.

Request To Update Number of Affected U.S. Products

PW requested that the FAA update the NPRM by changing the number of engines installed on airplanes of U.S. registry from 430 to 121.

The FAA agrees and has updated the number of engines installed on airplanes of U.S. registry from 430 to 121 in the Cost of Compliance paragraph of this final rule and updated the estimated costs accordingly.

Request To Incorporate Updated Service Information

PW requested that the FAA incorporate PW Special Instruction (SI) No. 240F–23A, dated February 7, 2024, into the final rule. PW noted that they have refined this SI, which lists a limited number of affected HPT hubs by S/N, and this information has already been provided to affected operators.

The FAA agrees with the request and has updated this final rule to reference PW SI No. 240F–23A, dated February 7, 2024, in paragraphs (h) and (m)(2)(ix) of this AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information:

- PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002, dated November 30, 2023, and PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002, dated November 30, 2023. This service information specifies a list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs that are identified by serial number (S/N) and installed on certain PW engines; and instructions for performing an AUSI on affected HPT 1st-stage hubs and HPT 2nd-stage hubs.
- PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004, dated November 30, 2023, and PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004, dated November 30, 2023. This service information specifies a list of affected HPC 8th-stage disks that are identified by S/N and installed on certain PW engines; and instructions for performing an AUSI on affected HPC 8th-stage disks.
- PW ASB PW1000G–A–72–00–0204–00A–930A–D, Issue No: 001, dated November 30, 2023, and PW ASB PW1000G–A–72–00–0150–00B–930A–D, Issue No: 001, dated November 30, 2023, which specifies procedures for performing repetitive AUSIs on affected HPC 8th-stage disks.
- PW ASB PW1000G–A–72–00–0205–00A–930A–D, Issue No: 001, dated November 30, 2023, and PW ASB PW1000G–A–72–00–0151–00B–930A–D, Issue No: 001, dated November 30, 2023, which specify procedures for performing repetitive AUSIs on affected HPT 1st-stage hubs and HPT 2nd-stage hubs.
- PW SI No. 240F–23A, dated February 7, 2024, which specifies a list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs that are identified by S/N and installed on certain PW engines. 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.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Determination of the Effective Date

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to make rules effective in less than thirty days, upon a finding of ''good cause.'' The FAA has found that the risk to the flying public justifies a shortened effective date for this rule due to powdered metal anomalies in HPT 1st-stage hub, HPT 2nd-stage hub, and HPC IBR–8 that could lead to premature fracture and uncontained failure, which could lead to the release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane. The compliance time for replacement of certain parts is within 100 flight cycles after the effective date of this AD, which

is on average one calendar month of operation. The longer these parts remain in service, the higher the probability of failure. Accordingly, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Costs of Compliance

The FAA estimates that this AD affects 121 engines installed on airplanes of U.S. registry. The FAA estimates that 121 engines will need the AUSI of the HPT 1st-stage hub, HPT 2nd-stage hub, and HPC 8th-stage disk; 121 engines will need replacement of the HPT 1st-stage hub; 121 engines will need replacement of the HPT 2nd-stage hub; 121 engines will need replacement of the HPC 7th-stage rotor; 121 engines will need replacement of the HPC 8th-stage disk; 121 engines would need replacement of the HPC rear hub; 121 engines will need replacement of the HPT 1st-stage air seal; 121 engines will need replacement of the HPT 2nd-stage air seal; 121 engines will need replacement of the HPT 1st-stage blade retaining plate; and 121 engines will need replacement of the HPT 2nd-stage blade retaining plate.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost (average pro-rated cost)	Cost per product	Cost on U.S. operators
Perform AUSI of HPT 1st-stage hub, HPT 2nd-stage hub, and HPC 8th-stage disk.	60 work-hours × $85 per hour = $5,100 ..	$0	$5,100	$617,100
Replace HPT 1st-stage hub	10 work-hours × 85 per hour = 850	49,500	50,350	6,092,350
Replace HPT 2nd-stage hub	10 work-hours × 85 per hour = 850	25,500	26,350	3,188,350
Replace HPC 7th-stage rotor	10 work-hours × 85 per hour = 850	48,000	48,850	5,910,850
Replace HPC 8th-stage disk	10 work-hours × 85 per hour = 850	35,500	36,350	4,398,350
Replace HPC rear hub	10 work-hours × 85 per hour = 850	83,000	83,850	10,145,850
Replace HPT 1st-stage air seal	10 work-hours × 85 per hour = 850	21,000	21,850	2,643,850
Replace HPT 2nd-stage air seal	10 work-hours × 85 per hour = 850	36,000	36,850	4,458,850
Replace HPT 1st-stage blade retaining plate	10 work-hours × 85 per hour = 850	34,000	34,850	4,216,850
Replace HPT 2nd-stage blade retaining plate	10 work-hours × 85 per hour = 850	13,000	13,850	1,675,850

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–06–04 Pratt & Whitney: Amendment 39–22709; Docket No. FAA–2023–2523; Project Identifier AD–2023–01086–E.

(a) Effective Date

This airworthiness directive (AD) is effective April 11, 2024.

(b) Affected ADs

None.

(c) Applicability

Pratt & Whitney (PW) Model PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an updated analysis of an event involving an International Aero Engines, LLC Model PW1127GA–JM engine, which experienced a high-pressure compressor (HPC) 7th-stage integrally bladed rotor separation that resulted in an engine shutdown and aborted takeoff. The FAA is issuing this AD to prevent failure of the high-pressure turbine (HPT) 1st-stage hub, HPT 2nd-stage hub, and HPC 8th-stage disk. The unsafe condition, if not addressed, could result in uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and possible loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For PW1500G engines with an installed HPC 8th-stage disk having part number (P/N) 30G7208, at the next HPC engine shop visit, except as required by paragraph (g)(3) of this AD, perform an angled ultrasonic inspection (AUSI) of the affected HPC 8th-stage disk for cracks in accordance with the Accomplishment Instructions, paragraph 8., of PW Alert Service Bulletin (ASB) PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004, dated November 30, 2023 (PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004).

(2) For PW1500G engines with an installed HPT 1st-stage hub having P/N 30G8501 or an installed HPT 2nd-stage hub having P/N 30G7202, at the next engine shop visit, except as required by paragraph (g)(3) of this AD, perform an AUSI of the affected HPT 1st-stage hub or HPT 2nd-stage hub, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 8.A. or 8.B., of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002, dated November 30, 2023 (PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002).

(3) For PW1500G engines with an installed part, P/N and serial number (S/N) listed in Table 1 to paragraph (g)(3) of this AD with no AUSI performed prior to the effective date of this AD, within the applicable compliance time listed in Table 1 to paragraph (g)(3) of this AD or within 100 flight cycles (FCs) after the effective date of this AD, whichever occurs later, perform an AUSI of the affected part for cracks in accordance with the applicable service bulletin listed in Table 1 to paragraph (g)(3) of this AD.

TABLE 1 TO PARAGRAPH (g)(3)—AUSI COMPLIANCE TIMES

Part	Applicable S/N listing	Compliance time	Applicable service bulletin (see paragraph (m)(2) of this AD)
HPC 8th-stage disk P/N 30G7208.	Table 1 of PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004.	Next HPC engine shop visit not to exceed 10,000 part cycles since new (CSN).	Accomplishment Instructions, paragraph 8., of PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004.
HPT 1st-stage hub P/N 30G8501.	Table 2 of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.	Next engine shop visit not to exceed 5,000 part CSN.	Accomplishment Instructions, paragraph 8.A. of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.
HPT 2nd-stage hub P/N 30G7202.	Table 3 of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.	Next engine shop visit not to exceed 5,000 part CSN.	Accomplishment Instructions, paragraph 8.B, of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.
HPT 1st-stage hub P/N 30G8501.	Table 4 of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.	Next engine shop visit not to exceed 4,000 part CSN.	Accomplishment Instructions, paragraph 8.A, of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.
HPT 2nd-stage hub P/N 30G7202.	Table 5 of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.	Next engine shop visit not to exceed 4,000 part CSN.	Accomplishment Instructions, paragraph 8.B., of PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002.

(4) Thereafter at each piece-part exposure of the affected part for PW1500G engines with an installed HPC 8th-stage disk having P/N 30G7208, an installed HPT 1st-stage hub having P/N 30G8501, or an installed HPT 2nd-stage hub having P/N 30G7202, do the following:

(i) Perform an AUSI of the affected HPC 8th-stage disk for cracks in accordance with the Accomplishment Instructions, paragraph 5.B., PW ASB PW1000G–A–72–00–0204–00A–930A–D, Issue No: 001, dated November 30, 2023.

(ii) Perform an AUSI of the affected HPT 1st-stage hub and HPT 2nd-stage hub, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 7.A. or 7.B., of PW ASB PW1000G–A–72–00–0205–00A–930A–D, Issue No: 001, dated November 30, 2023.

(5) For PW1900G engines with an installed HPC 8th-stage disk having P/N 30G7208, at the next HPC engine shop visit, except as required by paragraph (g)(7) of this AD, perform an AUSI of the affected HPC 8th-stage disk for cracks in accordance with the Accomplishment Instructions, paragraph 8., of Pratt & Whitney PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004, dated November 30, 2023 (PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004).

(6) For PW1900G engines with an installed HPT 1st-stage hub having P/N 30G8501 or an installed HPT 2nd-stage hub having P/N 30G7202, at the next engine shop visit, except as required by paragraph (g)(7) of this AD, perform an AUSI of the affected HPT 1st-stage hub and HPT 2nd-stage hub, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 8.A. or 8.B., of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002, dated November 30, 2023 (PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002).

(7) For PW1900G engines with an installed part, P/N and S/N listed in Table 2 to paragraph (g)(7) of this AD, with no AUSI performed prior to the effective date of this AD, within the compliance time listed in Table 2 to paragraph (g)(7) of this AD or within 100 FCs after the effective date of this AD, whichever occurs later, perform an AUSI of the affected parts for cracks in accordance with the applicable service bulletin listed in Table 2 to paragraph (g)(7) of this AD.

TABLE 2 TO PARAGRAPH (g)(7)—AUSI COMPLIANCE TIMES

Part	Table S/N is listed in	Compliance time	Applicable service bulletin (see paragraph (m)(2) of this AD)
HPC 8th-stage disk having P/N 30G7208.	Table 1 of PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004.	Next HPC engine shop visit not to exceed 10,000 part CSN.	Accomplishment Instructions, paragraph 8., of PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004.
HPT 1st-stage hub having P/N 30G8501.	Table 2 of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.	Next engine shop visit not to exceed 5,000 part CSN.	Accomplishment Instructions, paragraph 8.A., of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.
HPT 2nd-stage hub having P/N 30G7202.	Table 3 of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.	Next engine shop visit not to exceed 5,000 part CSN.	Accomplishment Instructions, paragraph 8.B, of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.
HPT 1st-stage hub having P/N 30G8501.	Table 4 of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.	Next engine shop visit not to exceed 4,000 part CSN.	Accomplishment Instructions, paragraph 8.A., of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.
HPT 2nd-stage hub having P/N 30G7202.	Table 5 of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.	Next engine shop visit not to exceed 4,000 part CSN.	Accomplishment Instructions, paragraph 8.B., of PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002.

(8) Thereafter at each piece-part exposure of the affected part for PW1900G engines with an installed HPC 8th-stage disk having P/N 30G7208, or an installed HPT 1st-stage hub having P/N 30G8501, or an installed HPT 2nd-stage hub having P/N 30G7202, do the following:

(i) Perform an AUSI of the affected HPC 8th-stage disk for cracks in accordance with the Accomplishment Instructions, paragraph 5.B., of PW ASB PW1000G–A–72–00–0150–00B–930A–D, Issue No: 001, dated November 30, 2023.

(ii) Perform an AUSI of the affected HPT 1st-stage hub and HPT 2nd-stage hub, as applicable, for cracks in accordance with the Accomplishment Instructions, paragraph 7.A. or 7.B., of PW ASB PW1000G–A–72–00–0151–00B–930A–D, Issue No: 001, dated November 30, 2023.

(9) If any crack is found during the inspections required by paragraph (g) of this AD, before further flight, remove the affected part from service and replace with a part eligible for installation.

(10) For engines with an installed part and P/N listed in Table 3 to paragraph (g)(10) of this AD having 3,300 CSN or less on the effective date of this AD, before the part accumulates 4,000 CSN or at the next engine shop visit after the effective date of this AD, whichever occurs first, remove the part from service and replace with a part eligible for installation.

TABLE 3 TO PARAGRAPH (g)(10)—PART NUMBERS

Part name	P/N
HPC 7th-stage rotor	30G3307
HPC 8th-stage disk	30G3248
HPC rear hub	30G2902
HPT 1st-stage hub	30G5701
HPT 2nd-stage hub	30G5002
HPT 1st-stage air seal	30G3132
HPT 2nd-stage air seal	30G3451
HPT 1st-stage blade retaining plate	30G1692
HPT 2nd-stage blade retaining plate	30G1698

(11) For engines with an installed part and P/N listed in Table 3 to paragraph (g)(10) of this AD having more than 3,300 CSN on the effective date of this AD, at the next engine shop visit or within 700 FCs after the effective date of this AD, whichever occurs first, remove the part from service and replace it with a part eligible for installation.

(12) For engines with an installed HPT 1st-stage hub having P/N 30G8501 or an installed HPT 2nd-stage hub having P/N 30G7202 and an S/N listed in Table 1 of PW Special Instruction (SI) No. 240F–23A, dated February 7, 2024, within 100 FCs from the effective date of this AD, remove the hub from service and replace it with a part eligible for installation.

(13) If an affected part has accumulated 100 FCs or less since the last AUSI, reinspection is not required provided that the part was not damaged during removal from the engine.

(h) Installation Prohibition

After the effective date of this AD, do not install an HPT 1st-stage hub having P/N 30G8501 or an HPT 2nd-stage hub having P/N 30G7202 and an S/N listed in Table 1 of PW SI No. 240F–23A, dated February 7, 2024, in any engine.

(i) Definitions

(1) For the purposes of this AD, ''PW1500G'' engines are PW Model PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 engines.

(2) For the purposes of this AD, ''PW1900G'' engines are PW Model PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A engines.

(3) For the purposes of this AD, a ''part eligible for installation'' is:

(i) Any HPC 7th-stage rotor, P/N 30G5307 or later approved P/N.

(ii) Any HPC 8th-stage disk, P/N 30G7208, that has passed the AUSI required by paragraph (g) of this AD or later approved P/N.

(iii) Any HPC rear hub, P/N 30G7308 or later approved P/N.

(iv) Any HPT 1st-stage hub, P/N 30G8501, that has passed the AUSI required by paragraph (g) of this AD or later approved P/N.

(v) Any HPT 2nd-stage hub, P/N 30G7202, that has passed the AUSI required by paragraph (g) of this AD or later approved P/N.

(vi) Any HPT 1st-stage air seal, P/N 30G5195 or later approved P/N.

(vii) Any HPT 2nd-stage air seal, P/N 30G5196 or later approved P/N.

(viii) Any HPT 1st-stage blade retaining plate, P/N 30G5193 or later approved P/N.

(ix) Any HPT 2nd-stage blade retaining plate, P/N 30G5194 or later approved P/N.

(4) For the purposes of this AD, a ''piece-part exposure'' is when the part is disassembled from the rotor assembly.

(5) For the purposes of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except for the following situations, which do not constitute an engine shop visit.

(i) The separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance.

(ii) Fan case maintenance or replacement.

(6) For the purposes of this AD, an ''HPC engine shop visit'' is when the HPC rotor assembly is removed from the HPC module.

(j) Credit for Previous Actions

This paragraph provides credit for the initial AUSI of the HPC 8th-stage disk, HPT 1st-stage hub and HPT 2nd-stage hub specified in paragraph (g)(1), (2), (4) and (5) of this AD, if the initial AUSI was performed before the effective date of this AD using the following service information.

(1) PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 001, dated March 16, 2023; or

(2) PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 001, dated March 22, 2023; or

(3) PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 002, dated June 19, 2023; or

(4) PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 003, dated August 14, 2023; or

(5) PW ASB PW1000G–A–72–00–0141–00B–930A–D, Issue No: 001, dated March 16, 2023; or

(6) PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 001, dated March 22, 2023; or

(7) PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 002, dated June 19, 2023.; or

(8) PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 003, dated August 14, 2023.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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 AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (l) of this AD.

(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.

(l) Additional Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Pratt & Whitney (PW) Alert Service Bulletin (ASB) PW1000G–A–72–00–0141–00B–930A–D, Issue No: 002, dated November 30, 2023.

(ii) PW ASB PW1000G–A–72–00–0142–00B–930A–D, Issue No: 004, dated November 30, 2023.

(iii) PW ASB PW1000G–A–72–00–0150–00B–930A–D, Issue No: 001, dated November 30, 2023.

(iv) PW ASB PW1000G–A–72–00–0151–00B–930A–D, Issue No: 001, dated November 30, 2023.

(v) PW ASB PW1000G–A–72–00–0196–00A–930A–D, Issue No: 002, dated November 30, 2023.

(vi) PW ASB PW1000G–A–72–00–0197–00A–930A–D, Issue No: 004, dated November 30, 2023.

(vii) PW ASB PW1000G–A–72–00–0204–00A–930A–D, Issue No: 001, dated November 30, 2023.

(viii) PW ASB PW1000G–A–72–00–0205–00A–930A–D, Issue No: 001, dated November 30, 2023.

(ix) PW Special Instruction No. 240F–23A, dated February 7, 2024.

(3) For PW service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on March 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06433 Filed 3–22–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0472; Project Identifier MCAI–2024–00095–E; Amendment 39–22707; AD 2024–06–02]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. This AD was prompted by a report of a crack on the centrifugal compressor case mount pad weld area, caused by a non-conforming welding (lack of welding penetration). This AD requires a one-time detailed visual inspection of the compressor case pad welds for any crack, and replacement of the compressor case if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 11, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 11, 2024.

The FAA must receive comments on this AD by May 13, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0472; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–0472.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0472; Project Identifier MCAI–2024–00095–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024–0040–E, dated February 8, 2024, (EASA AD 2024–0040–E) (also referred to as the MCAI), to correct an unsafe condition on GEAC Model M601D, M601D–1, M601D–2, M601D–11, M601D–11NZ, M601E, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601E–21, M601F, M601FS, and M601Z engines. The MCAI states that a crack was found on the centrifugal compressor case mount pad weld area of an engine, which led to an unscheduled engine removal. Further investigation identified a non-conforming welding in the location of the failure (lack of

welding penetration). The manufacturer issued service information that provides instruction for a one-time detailed visual inspection of the compressor case for any crack in the location of the pad welds, and replacement of the compressor case if necessary. This condition, if not addressed, could lead to crack propagation, possibly resulting in engine separation and reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0472.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0040–E which specifies procedures for performing a one-time detailed visual inspection of the compressor case pad welds for any crack, replacement of the compressor case if necessary, and sending certain inspection results to the manufacturer.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the MCAI, except for any differences identified as exceptions in the regulatory text of this AD, and except as discussed under ''Differences Between this AD and the MCAI.''

Differences Between This AD and the MCAI

GEAC Model M601D, M601D–1, M601D–2, M601D–11NZ, M601E, M601E–21, M601FS, and M601Z engines do not have an FAA type certificate, therefore this AD does not include those engines in the applicability.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule. The presence of cracks on the compressor case pad weld area caused by non-conforming welding could lead to crack propagation, possibly resulting in engine separation and reduced control of the airplane, which indicates an immediate safety of flight problem. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 45 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect centrifugal compressor case	1 work-hour × $85 per hour = $85	$0	$85	$3,825
Report inspection results	1 work-hour × $85 per hour = $85	0	85	3,825

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of engines that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace centrifugal compressor case	10 work-hours × $85 per hour = $850	$5,000	$5,850

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with

a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–06–02 GE Aviation Czech s.r.o. (Type Certificate Previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–22707; Docket No. FAA–2024–0472; Project Identifier MCAI–2024–00095–E.

(a) Effective Date

This airworthiness directive (AD) is effective April 11, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines.

(d) Subject

Joint Aircraft Service Component (JASC) Codes 7120, Engine Mount Section; 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of a crack on the centrifugal compressor case mount pad weld area, caused by a non-conforming welding (lack of welding penetration). The FAA is issuing this AD to prevent failure of the centrifugal compressor case. The unsafe condition, if not addressed, could result in crack propagation, possibly resulting in engine separation and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0040–E, dated February 8, 2024 (EASA AD 2024–0040–E).

(h) Exceptions to EASA AD 2024–0040–E

(1) Where EASA AD 2024–0040–E requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2024–0040–E specifies to contact the manufacturer for approved instructions if any crack is detected on an affected part, this AD requires replacement of the compressor case.

(3) This AD does not adopt the Remarks paragraph of EASA AD 2024–0040–E.

(i) Alternative Methods of Compliance (AMOCs)

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) of this AD and email to *ANE-AD-AMOC@faa.gov.*

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) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0040–E, dated February 8, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0040–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on March 21, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06430 Filed 3–22–24; 11:15 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2021–0014]

RIN 0960–AI60

Omitting Food From In-Kind Support and Maintenance Calculations

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are updating our Supplemental Security Income (SSI) regulations to remove food from the calculations of In-Kind Support and Maintenance (ISM). We are also adding conforming language to our definition of income. These changes simplify our rules by making them less cumbersome to administer and easier for the public to understand and follow, and they improve the equitable treatment of food assistance within the SSI program. This final rule also includes other minor revisions to our regulations related to income, including clarifying our longstanding position that income may be received ''constructively.''

DATES: This final rule will be effective September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410–966–7384. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION:

Background

The SSI program provides monthly payments to adults and children with a disability or blindness, and to adults aged 65 and older. These individuals must meet multiple eligibility requirements, including having resources and income below specified amounts.[1] Resources are cash or other liquid assets or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.[2] Income is anything individuals receive in cash or in-kind that they can use to meet their food and shelter needs.[3] Individuals' resources may affect their SSI eligibility, while their income may affect both their eligibility and payment amounts.

Both earned income and unearned income include items received in-kind.[4] Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income.[5] However, we have special rules for valuing in-kind support and maintenance (ISM) that is received as unearned income.[6] On February 15, 2023, we published a Notice of Proposed Rulemaking (NPRM), *Omitting Food From In-Kind Support and Maintenance Calculations,*[7] which proposed updating our regulations to exclude food from the ISM calculations and adding conforming language to our definition of income.

We are making these changes based on the Commissioner of Social Security's rulemaking authority specified in sections 205(a), 702(a)(5), 1631(d)(1), 1631(e)(1)(A), and 1633(a) of the Social Security Act. These sections of the Act give the Commissioner the authority to adopt rules relating to, among other things, what data the Commissioner determines is necessary for the agency to collect for the effective and efficient administration of the SSI program, as well as the nature and extent of the evidence applicants and recipients need to provide to establish benefit eligibility. The modifications to our policy regarding how we will calculate ISM are a proper exercise of the Commissioner's rulemaking authority under the Act. The NPRM includes a full discussion of the ISM policy as well as the rationale for and analysis of this policy change, which we adopt in this final rule except as indicated in the following modifications.

Under this final rule, we no longer consider food expenses in our ISM calculations. Instead, we will consider only shelter expenses (*i.e.,* room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). We will continue to use the Value of the One-Third Reduction (VTR) rule[8] and the Presumed Maximum Value (PMV) rule in determining the value of ISM to an SSI applicant or recipient.[9]

Though we are omitting food expenses from our ISM calculations, we will still ask a question about food for the narrow purpose of determining whether to use the VTR rule or the PMV rule. Food expenses would not be included in the actual calculation; they will only be considered in determining whether to apply the VTR or PMV rule. When an applicant or recipient[10] tells us that they live in another person's household, we will ask if others within the household pay for or provide them with all their meals. If the applicant or recipient answers ''no,'' we will value the shelter using the PMV rule. If the applicant or recipient answers ''yes,'' we will then evaluate the applicant's or recipient's shelter contribution to determine if the PMV rule or the VTR rule applies. If the VTR rule does not apply, then we will evaluate any ISM under the PMV rule. Asking only the one question is a change from what we proposed. In the NPRM, we proposed asking three questions to assess whether an applicant or recipient purchased food separately from the household. These were: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive Supplemental Nutrition Assistance Program (SNAP) benefits?[11] In this final rule, we revised these three questions into one single question to better enable us to identify applicants and recipients who should have their shelter valued under the PMV rule because they obtain food outside of their household. Our original three questions might have disadvantaged some applicants and recipients because they would not have identified all potential circumstances in which the PMV rule currently applies (and because the PMV rule can be rebutted, it is more advantageous in some circumstances). For example, our original three questions would not have identified situations where: applicants and recipients receive benefits from food-assistance programs other than SNAP;

[1] See 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 CFR part 416.

[2] 20 CFR 416.1201(a).

[3] 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

[4] See 20 CFR 416.1110 and 20 CFR 416.1120.

[5] See 20 CFR 416.1111(d), 416.1112, 416.1123(c), and 416.1124.

[6] See 20 CFR 416.1123(c) and 416.1131–1147.

[7] 88 FR 9779.

[8] When we apply the VTR rule, we count one-third of the Federal Benefit Rate (FBR) as unearned income. See 42 U.S.C. 1382a(a)(2)(A); 20 CFR 416.1131(a). For information on the FBR, see 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

[9] When we apply the PMV rule, we count the set maximum value as unearned income, unless the applicant or recipient rebuts this presumption. See 20 CFR 416.1140. The set maximum value is one-third of the FBR, plus the amount of the general income exclusion, see id., which is currently $20, see 20 CFR 416.1124(c)(12).

[10] We refer to ''applicant or recipient'' here and throughout this final rule when we mean ''applicant, recipient, or couple'' for ease of reference, except where reference to the couple is specifically relevant.

[11] See 88 FR 9785.

people outside of the household pay for or provide food or meals; or applicants or recipients earmark contributions for a pro rata share of the household's food expenses under the previous process.

We will apply the VTR rule when applicants or recipients (1) live in another person's household throughout a month; (2) receive shelter from others living in the household; and (3) others within the household pay for or provide all the applicant's or recipient's meals. By definition, claimants who live in their own households will not be assessed under VTR. Alternatively, we will apply the PMV rule when an applicant or recipient receives ISM, but the VTR rule does not apply. This means we will apply the PMV rule when applicants or recipients: (1) live in another person's household and receive shelter from others living in the household, but others within the household do not pay for or provide all the applicant's or recipient's meals; (2) live in their own household, but someone helps provide them with shelter; or (3) live in a non-medical institution as described in 20 CFR 416.1141(c). Under the PMV rule, applicants and recipients may rebut the presumption that shelter is worth the set maximum value by showing the actual value is lower than the set maximum value.[12]

In addition, we are updating our regulations with clarifying language. Our previous regulations stated that for the VTR rule to apply, applicants or recipients must receive both food and shelter from the person in whose household they are living. In practice, when determining whether to apply the VTR rule, we consider others in the household as well. We are clarifying this longstanding practice in our regulations. Specifically, in 20 CFR 416.1131(a)(2) and (3), we have changed the language to indicate that we will consider food and shelter received ''from others living in the household''—not just from the person in whose household the applicant or recipient is living.

This final rule also clarifies that income may be received ''constructively.'' For purposes of the definition of income in 20 CFR 416.1102, income may be received ''actually'' or ''constructively.'' As we explained in our NPRM, income is received constructively if it is under the applicant's or recipient's control, or the applicant or recipient can use it despite not actually receiving it, unless there are significant restrictions on the applicant's or recipient's ability to receive it.[13] Constructive receipt of income is part of our current policy, and this change makes it clearer.

Severability

In the event of an invalidation of any part of this rule, our intent is to preserve the remaining portions of the rule to the fullest possible extent. In particular, we intend the clarification of consideration of others in the household in 20 CFR 416.1131 to be severable, as it better explains our current policy and functions independently of the other changes reflected in this final rule. We also intend the clarification of constructive receipt of income in 20 CFR 416.1102 to be severable, as it better explains our current policy and functions independently of the other changes reflected in this final rule.

Justification for Change

We historically included in-kind receipt of food in our ISM calculations because food assistance helps people meet their basic needs. However, the complexities of our current food ISM policies outweigh their utility. As discussed in the NPRM in much greater detail, we are revising our policy for several purposes, including to make our policies simpler (and thus easier to comprehend and use), and to promote equity both by treating food assistance equally regardless of the source and by not disadvantaging an already vulnerable population when they receive food assistance.[14] First, this final rule simplifies SSI policy because it removes a variable from our ISM calculations, which, in turn, will: reduce the amount of program rules an applicant or recipient needs to understand; reduce the amount of information that applicants or recipients must report; simplify and shorten processing; and lead to fewer benefit recalculations and payment errors. Second, this final rule promotes equity. SSI recipients, by definition, have low income and resources. Because low-income people disproportionately encounter barriers across a range of social, health, and economic outcomes, our goal is to improve their circumstances, thus improving equity. As we discussed in our NPRM, disabled individuals are more likely to be food insecure, and this policy change will remove critical barriers to receiving informal food assistance from friends, family, and community networks of support.[15] Under our current policy, this type of food assistance from family and friends is treated differently than food support from charitable or government sources.[16] Thus, excluding food from the calculation of ISM ensures that food assistance from public and private sources is treated uniformly under our ISM rules.[17] Overall, this final rule promotes equity by: providing increased financial security to affected beneficiaries; providing consistent treatment of food support regardless of source; reducing reporting requirements and the effects of reporting on applicants and recipients; and facilitating improved food security among certain beneficiaries.[18]

In addition, as we discussed in the NPRM, food costs are quite variable and valuing food is inherently challenging because it is difficult to accurately estimate food expenses.[19] Individuals receive food at different intervals, in different amounts, and from different sources, and the price of food can fluctuate significantly over a relatively short period of time. When any of these food-related factors changes, under our current policy, applicants and recipients must immediately report the change or else risk a potential over- or underpayment.[20] This creates significant burdens for the SSI applicants and recipients and also for the agency to process frequent changes related to food ISM and ensure that payments are accurate. As we noted in the NPRM, our ISM calculations have historically been a significant cause of payment errors.[21] We anticipate that eliminating a highly variable expense, such as food, from our ISM calculations will help us achieve greater program efficiency and payment accuracy.

For a more detailed explanation of how we expect the final rule to function in these ways, we refer to Justification for Change section of the NPRM.[22]

Modifications From NPRM

In several places, this final rule differs slightly from the CFR text we set out in the NPRM. As discussed earlier, we revised the language because our original three questions might have disadvantaged applicants and recipients who obtain food outside of their household. We anticipate that the revised question will be more comprehensive than the original three

[12] If applicants or recipients successfully rebut that presumption, we reduce their benefits by a smaller amount or not at all. See 20 CFR 416.1140(2)(ii).

[13] 88 FR 9784 (Feb. 15, 2023).

[14] *Id.*

[15] *Id.* at 9786–87.

[16] *Id.* at 9787.

[17] *Id.*

[18] *Id.* at 9786–88.

[19] *Id.* at 9785.

[20] *Id.* at 9785–86.

[21] *Id.* at 9786–88.

[22] *Id.* at 9784–9788.

questions we proposed in the NPRM. In addition, we eliminated the phrase we proposed related to receiving shelter from a ''combination of others living inside the household and others living outside the household.'' In these instances, this final rule retains existing CFR language, which references only receipt of shelter from ''others living in the household.'' We detail these changes below.

- We revised paragraph (h) of 20 CFR 416.1121. In the NPRM, we stated that one rule (the VTR rule) applies if ''you are living throughout a month in another person's household receiving all your shelter from others living in the household.'' [23] This final rule revises this to ''you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals.''
- We revised paragraph (c) of 20 CFR 416.1130 and redesignated it as paragraph (b)(2). In the NPRM, we stated that the VTR rule applies if you (applicants or recipients) are living in the household of a person who provides you with shelter, ''unless we determine that you buy your food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits.'' [24] This final rule revises this to ''and others within the household pay for or provide you with all of your meals.''
- We revised paragraph (a)(2) of 20 CFR 416.1131 to eliminate the phrase, ''combination of others living inside the household and others living outside the household.'' [25] We also revised paragraph (a)(3) of 20 CFR 416.1131. In the NPRM, we stated that the VTR rule applies when you (applicants or recipients), ''[d]o not buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits.'' This final rule revises this to when ''[o]thers within the household pay for or provide you with all of your meals.''
- We revised paragraph (a) of 20 CFR 416.1141. In the NPRM, we did not propose changes to this section. The previous regulatory text stated that the PMV rule applies if applicants or recipients are living in another person's household ''but not receiving both food and shelter from that person.'' The final rule revises this to ''you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals.''
- We revised paragraphs (a) and (b) of 20 CFR 416.1147 to eliminate the phrase, ''combination of others living inside the household and others living outside the household.'' [26] We further revised paragraph (a) of 20 CFR 416.1147. In the NPRM, we stated, ''When both of you live in another person's household throughout a month and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household,'' then the VTR rule applies to the couple. The final rule revises this to ''When both of you live in another person's household throughout a month, receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals. . . .'' We further revised paragraph (b) of 20 CFR 416.1147. In the NPRM we stated, ''If one of you is living in the household of another person who provides you with shelter'' and the other person is temporarily absent and ineligible, then we compute benefits as if the two are separately eligible individuals. The final rule revises this to ''If one of you is living in the household of another person and receives shelter from others living in the household, and others within the household pay for or provide you with all of your meals. . . .''

Listening Sessions

During the public comment period, we held two listening sessions, as described in Executive Order (E.O.) 12866, at the request of advocacy groups. Notes from those sessions are available at *https://www.regulations.gov/document/SSA-2021-0014-0003* under the ''Supporting & Related Material'' tab. The issues raised during those sessions are also addressed in the ''Comments Summary'' section of this final rule.

Comments Summary

We received 4,386 public comments on our NPRM from February 15 through April 17, 2023. Of the total comments, 4,320 are available for public viewing at *https://www.regulations.gov/docket/SSA-2021-0014*.[27] These comments were from:

- Individuals;
- Advocacy groups for claimant representatives, such as the National Organization of Social Security Claimants' Representatives and the National Association of Disability Representatives; and
- Other advocacy groups.

We carefully considered the public comments we received. More than 95% of commenters supported the proposals in the NPRM. Some commenters agreed with the overarching proposal but recommended amendments to it. Other commenters asked questions and offered opinions on the potential financial and legal implications of the proposal. A few commenters disagreed with the proposal altogether.

We received some comments that were outside the scope of this rule because they did not relate to our proposal to remove food from the ISM calculations. Even though outside the scope, we address some of these comments where they related to ISM more generally and a response might help the public understand our programs better.

The next section summarizes and responds to the public comments.

Comments and Responses

Requests To Modify the New Policy Outlined in the NPRM

Comment: A commenter suggested we should no longer apply ISM retroactively, and that we should provide advance notice of ISM reduction. The commenter expressed that applicants and recipients should have the opportunity to understand the effects of ISM and to begin contributing a fair share towards the household expenses before ISM reduction is applied. The commenter asserted that by ceasing the retroactive application of the ISM rule for SSI applicants, SSA would greatly reduce ''negative effects'' and ''stop penalizing recipients for the long wait time it takes for applications and appeals processing.''

Response: In general, we determine an individual's eligibility for SSI payments for a month based on the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in that month.[28] But, for a variety of reasons, we may have to calculate payments for a particular month after the fact (for example, because it takes time to process a new claim, or we did not receive timely information about a change in circumstances). Doing so does not make our application of ISM ''retroactive.'' Additionally, we provide written advance notice of a planned adverse action, where SSI payments would be reduced, suspended, or terminated.[29]

[23] 88 FR 9794 (Feb. 15, 2023).

[24] *Id.*

[25] *Id.*

[26] 88 FR 9795 (Feb. 15, 2023).

[27] We excluded comments that were unrelated to the proposal or were exact duplicates submitted by the same commenter. Because of the nature of sorting and processing comments, some exact duplicates may have been posted publicly.

[28] *See* 42 U.S.C. 1382(c)(1).

[29] *See* 20 CFR 416.1336.

We agree that individuals should have the opportunity to understand ISM and its potential effects. Individuals may contact us directly to ask questions, and we provide a variety of resources to explain our rules in plain language, like instructions on our forms and reader-friendly publications we make available online, by mail, and in our offices.

Comment: Several commenters suggested that we change ISM rules to reflect a rebuttable presumption that the SSI recipient has no countable ISM, because ''only rarely'' is the ISM received of ''true market value.''

Response: It is not clear to us what the legal and policy basis would be to presume that the individual has no countable ISM. The Social Security Act states ''that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that . . . benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.'' [30] Further, it is not clear to us who would rebut the presumption. Nor is it clear to us what is meant by the statement that the ISM received rarely is of ''true market value.''

Comment: One commenter recommended that we create a PMV rebuttal form and make changes to the Rebuttal Rights Notice. The commenter stated that such a form should plainly advise recipients that they have a right to rebut PMV, clearly explain what kinds of evidence recipients could submit and how to do so and provide space for recipients to provide further information to the agency. The commenter expressed that many SSI recipients are ''unaware of the PMV rebuttal procedures'' and are ''denied crucial additional benefits to which they are entitled because they fail to rightfully rebut the PMV's maximum one-third reduction.''

Response: Generally, our technicians discuss the PMV rebuttal process with applicants and recipients when they assist them by phone or in person at the time of the application or post-eligibility event.[31] Sometimes, our technicians are unable to discuss the PMV rebuttal process upfront, such as when an applicant applies electronically or by mail. Under those circumstances, we send them the Rebuttal Rights Notification. This letter serves as a prompt for applicants and recipients to contact us directly to ensure they understand PMV rebuttal rights and how to rebut the PMV. While we appreciate this commenter's feedback, we need to conduct additional analysis prior to determining if a form would improve certain applicants' and recipients' ability to understand and utilize the PMV rebuttal process, or if people would find it more burdensome. As a result, while this final rule does not include the adoption of a new form, in FY 2024 we intend to initiate a separate Paperwork Reduction Act (PRA) process. As part of this PRA process, we would propose the Rebuttal Rights Notification Form, and would solicit feedback on the proposed form.

Comment: One commenter expressed that the SSI program would be better served by eliminating the VTR framework altogether and instead assessing all recipients under the PMV framework.

Response: We are unable to eliminate the VTR because it is required by the Social Security Act in 42 U.S.C. 1382a(a)(2)(A), which states: ''in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in-kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) . . . shall be reduced by 33 ⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse). . . .''

Comment: A commenter suggested there is an alternative simplification: assigning a set value to food received with a possibility of rebuttal.

Response: The commenter's suggestion would be difficult to implement, as it is not clear how we would fairly assign a set value to food received, particularly since food prices can be volatile. Additionally, because rebutting the presumption would require evidence of food costs, it would present the same challenges and burdens that currently exist.

Miscellaneous Comments Regarding Various Aspects of the New Rule

Comment: A commenter expressed that it may be efficient to use data matches with State agencies to establish SNAP receipt, and to allow applicants and recipients the opportunity to rebut the results of the match.

Response: The commenter's suggested use of a data match with State agencies for SNAP benefits related to our original proposal to ask three food-related questions—one of which asked directly about SNAP receipt. However, as noted above, instead of the three food-related questions we proposed in the NPRM, we will ask only one food-related question, for the limited purpose of determining whether ISM should be valued under the VTR or PMV rule: do others within the household pay for or provide you with all of your meals? We separately ask about an applicant's or recipient's receipt of food-assistance benefits for purposes other than determining their living arrangement and will continue to do so. We will work to add appropriate internal guidance to the question ''Do others within the household pay for or provide you with all of your meals?'' to direct technicians to review whether the applicant or recipient has separately indicated they receive food-assistance benefits. This will ensure that when an individual has indicated they receive food-assistance benefits they are treated under PMV. Further, the receipt of SNAP benefits will also continue to be relevant to our proposed rulemaking: *Expand the Definition of a Public Assistance Household,*[32] which proposes to expand our definition of a public assistance household to include SNAP as an additional means-tested public income-maintenance (PIM) program under 20 CFR 416.1142(a). The agency will use data matches with State agencies if appropriate for these other purposes.

Comment: One commenter noted that the Medicare Part D Extra Help program does not count ISM in determining eligibility, and the commenter expressed that the ''incentive structure of the Extra Help subsidy could ultimately decrease the same individual's SSI assistance'' when individuals are eligible under both programs. Further, the commenter expressed that removing shelter inputs from ISM entirely would make SSI and the Extra Help program eligibility methodologies more uniform. The commenter stated that, in an ideal system, eligibility criteria for low-income assistance programs would be consistent.

Response: The Social Security Act requires that we treat ISM differently for SSI than for Extra Help. While the Act specifies that income for Extra Help is generally calculated the same way as for SSI, it also says that for Extra Help ''support and maintenance furnished in-kind shall not be counted as income.'' [33] We do not anticipate changes in our ISM calculations will impact the Extra Help program.

Comment: One commenter recommended simplifying our ISM regulations for increased readability and digestibility. The commenter expressed that SSI recipients and applicants

[30] 42 U.S.C. 1383(e)(1)(B)(i).

[31] See Program Operations Manual System (POMS) SI 00835.320.

[32] See 88 FR 67148.

[33] *See* 42 U.S.C. 1395w–114(a)(3)(C)(i); POMS HI 03020.045.

typically require ''extensive and time-consuming client counseling to translate dense terminology and complex rule structure into plain language.'' For example, the commenter said that the language in 20 CFR 416.1102 is challenging because it presents ''in-kind support and maintenance'' as an exception to a general rule. The commenter expressed there is also a broader readability problem with ''in-kind income,'' because it is an ''uncommon and unfamiliar term that confuses most people and prevents them from understanding their reporting requirements.'' In addition, they suggested the possibility of renaming ISM with a term like ''value of free shelter'' or ''free shelter reduction.''

Response: Although we appreciate the suggestion to simplify and improve the readability and digestibility of our regulations, it is not possible to eliminate all technical language. Sometimes it is necessary for us to use terms that may be technical, unique to the SSI program, or both because they reflect complex statutory requirements and other unique aspects of the SSI program. The use of such terms is often because the requirements and language are set by statute.

In addition, the terms ''value of free shelter'' or ''free shelter reduction'' might not be accurate and might be confused with other policies in our program, such as ''rent-free shelter.'' [34] Further, it is important to keep our terms consistent throughout our policies, forms, publications, and outreach efforts. Revising a widely used term like ''ISM'' would be a significant undertaking and would likely lead to confusion for the people who receive benefits from, or work with recipients of, our program currently and are already familiar with the terms we use now.

However, we acknowledge that our regulations are complex. For that reason, we provide a variety of resources to explain our rules in plain language, like instructions on our forms and reader-friendly publications we make available online, by mail, and in our offices. Individuals may also contact us directly to ask questions.

Comment: Multiple commenters expressed concerns about, or advised against, continuing to ask applicants and recipients the three questions about food [35] to determine whether to use the VTR or PMV rule. They said asking these questions and continuing to consider food, even in this limited way, would result in complexity and confusion for applicants, recipients, and SSA staff.

Conversely, another commenter supported our proposal to continue asking the food questions. The commenter said, ''While we acknowledge that asking these three questions of all SSI recipients does not streamline the ISM process for applicants and recipients, that is clearly outweighed by the fact that this approach will enable more applicants and recipients to be assessed under the PMV rule, thereby avoiding a potential ISM reduction that is greater than the actual value of the ISM received.'' Another commenter similarly supported continuing to ask the food questions by urging us to ''take care not to inadvertently penalize recipients using their monthly benefits to contribute to their household's food expenses'' and provided an example of a former client who was ''eligible to receive her maximum FBR because she paid for her household's food, though she was allowed to live in that household rent-free.''

Response: We acknowledge that it would simplify our process further if we stopped asking SSI applicants and recipients questions about food. Instead of asking three questions as proposed in the NPRM, we will instead ask one question to make the process simpler. Receipt of food from outside the household can determine whether the PMV rule applies, and the PMV can be advantageous in some circumstances because it provides an opportunity for applicants and recipients to rebut the value of ISM provided. Therefore, we think it is important to continue to ask about food in this limited way.

Comment: A commenter asserted that support and maintenance means room and board as evidenced by the context of the law,[36] where the ''exclusion of a residence in a nonprofit retirement home is given, and room and board is clearly understood, as in [Program Operations Manual System (POMS)] SI 00830.605.'' In addition, the commenter mentioned a 2008 Bulletin article cited in the NPRM.[37] The commenter added that PMV must emulate VTR, and therefore that removal of food from ISM is not to be considered as within the law.

Response: We are removing food from the calculations of ISM. Regarding the statute's provision on residing in a nonprofit retirement home or similar nonprofit institution,[38] we did not change the regulations that apply when someone lives in a nonprofit retirement home or similar institution.[39] Regarding the comments on POMS SI 00830.605 (Home Energy Assistance and Support and Maintenance Assistance (HEA/SMA)),[40] we did not change the regulations on support and maintenance assistance.[41]

The 2008 Bulletin referenced by the commenter generally supports simplification such as removing food from the ISM calculations: ''One of the founding principles of SSI is that, as a program that is national in scope, it should be based on a 'flat grant' approach that does not involve program administrators in the detailed household budgets of millions of recipients. The law creating the SSI program included the one-third reduction provision so that SSA would not have to determine the actual value of room and board when a recipient lived with a friend or relative. . . . SSA created the PMV rule and the pro rata share concept through regulations in an attempt to better address equity among recipients. However, these regulations compromised the simplification objective of the 'flat grant' approach[.]''

Finally, it is not clear what it would mean for the PMV rule to emulate the VTR rule with respect to removal of food from the calculation of ISM. The changes here will remove food from the calculation of ISM under both rules.

Comment: A commenter asserted that the 2005 precedent of the removal of clothing, used to support the proposal, actually achieves the opposite. The commenter said that clothing is a ''semi-durable'' good and may be thought to be unlike consumption goods and services like food and shelter. The commenter pointed to text from the 2005 rule which says: ''unlike food and shelter, clothing generally is not received every month. Items of clothing are more likely to be received infrequently and sporadically, and they generally have no substantial value.'' The commenter asked if the same could be said for food.

[34] See POMS SI 00835.370.

[35] As mentioned above, the questions we proposed in the NPRM were: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP benefits?

[36] The commenter cited ''1612a(2)(A).'' We believe the intended reference was to section 1612(a)(2)(A) of the Social Security Act (42 U.S.C. 1382a(a)(2)(A)).

[37] See Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. ''Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.'' Social Security Bulletin, vol. 68, no. 4, 2008, *www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html*.

[38] Section 1612(a)(2)(A) of the Social Security Act, as amended (42 U.S.C. 1382a(a)(2)(A)).

[39] 20 CFR 416.1144.

[40] We note also that our sub-regulatory guidance, including our POMS, does not carry the weight of regulations.

[41] 20 CFR 416.1157.

Response: We did not make the same simplification for food that we did for clothing. In 2005, we removed clothing from the definition of income and the definition of ISM.[42] Here, we are removing food from the calculations of ISM. The comparison that we drew in the NPRM—''Like the 2005 simplification, this proposal would simplify the ISM calculations with respect to a factor for which it is difficult to obtain accurate, verifiable estimates. Like clothing, food is an expense that fluctuates from month to month and may be provided from different sources at different intervals.''—is accurate. Furthermore, while the 2005 rule included specific rationale justifying why it was appropriate to treat clothing differently than food or shelter, including the argument the commenter raised, in developing this rulemaking we presented specific rationale as to why it is appropriate to remove food from the calculation of ISM.[43]

Comments Regarding Potential Financial Effects of This Policy

Comment: A commenter asked how much of the estimated SSI program cost of $1.5 billion is due to an estimated increase in the number of applications that might result following publication of this rule.

Response: The Office of the Chief Actuary (OCACT) estimated that roughly $0.2 billion of the estimated total increase in Federal SSI payments, from fiscal years (FY) 2024 through 2033, is due to applications that would not be filed under current rules but are expected to be filed under the new rules. This is equivalent to an increase of 26,000 Federal SSI recipients in FY 2033.

Comment: A commenter asserted that the administrative burden reduction and cost savings to the agency and the public are small, while many beneficiaries will be ''harmed'' by the consequences of the change. The commenter said the ''entire regime of reporting and investigations is still needed for housing support and indeed several food questions are still going to be asked.'' The commenter also stated that, because SSI is considered in decisions regarding SNAP (and housing assistance), some recipients could see reductions in these food (and housing) benefits. Further, the commenter suggested that we should use the Financial Eligibility Model (FEM) to model and consider these effects. In addition, the commenter expressed that this rule will ''encourage the migration of beneficiaries from living in their family's home and receiving ample food support to either staying in their family's home with no food support or moving on their own.''

Response: Though removing food from the calculations of ISM is limited, we anticipate that removing even just this one variable from our calculations will simplify the process.

When we use this final rule, we will ask fewer questions, not require details about food expenses and costs, and not require verification of food-related amounts. This reduces burdens for applicants and recipients. As noted in our NPRM, we expect time-savings related to this rule to have associated cost-savings for applicants, recipients, and our agency.

Regarding the comment on potential reductions in SNAP or other benefits, though we cannot speak fully to the rule change's effects on programs that we do not administer, we note that when SNAP benefits are affected by increased income, such as an SSI payment, they are generally reduced by 30% of the increase, up to the point of ineligibility.[44]

The FEM is an internal tool developed by SSA that we have used historically to match survey data with administrative records to evaluate financial eligibility for SSI and other programs. The FEM is not capable of estimating the impact of SSI changes on other programs, nor was it designed for that purpose.

Lastly, we have not made this rule change to provide incentives for people to change their living arrangements or the way they obtain food, including food assistance. For the reasons stated in the NPRM, we anticipate this regulation will improve the administration of our program.

Comment: One commenter said, ''Medicaid impacts do not appear to be discussed,'' and opined that there could be a substantial effect on Medicaid expenditures. The commenter asked if a discussion of Medicaid impacts will be included with the final rule.

Response: As a matter of protocol, the estimates prepared by SSA's OCACT focus on the impact on SSA.

Comment: A commenter expressed that States may be harmed by the proposed change because some individuals currently not receiving benefits will become eligible and State expenses for supplemental benefits will increase.

Response: We did not calculate the effect on State supplemental payments as this is outside the scope of our standard actuarial work. State supplements are relatively small compared to the Federal Benefit Rate (FBR) and payments depend on living arrangements defined by each State. We anticipate that some individuals will become eligible for Federal SSI payments under this rule change, but a small number of those who remain ineligible for a Federal payment could become eligible for a State payment as well.[45] We are unable to speak to State-administered SSI supplement effects.

Comments on the Rulemaking Process and Associated Legal Issues

Comment: One commenter stated that the regulation will cost taxpayers $1.5 billion over ten years[46] and asserted (without further explanation) that the regulation violates the major questions doctrine of the United States Supreme Court. Further, the commenter expressed that we gave no justification for the timing of the proposal.

Response: The Commissioner of Social Security has ''full power and authority to make rules and regulations to establish procedures'' that are ''not inconsistent with the provisions of'' the Social Security Act and are ''necessary or appropriate to carry out such provisions.''[47] The Supreme Court has described this particular Congressional grant of authority as ''exceptionally broad.''[48] In addition, the Commissioner has authority to prescribe the requirements for filing applications,

[42] 70 FR 6340.

[43] 88 FR 9785 (Feb. 15, 2023).

[44] See the Food and Nutrition Services, U.S. Department of Agriculture's SNAP Eligibility page available at: *https://www.fns.usda.gov/snap/recipient/eligibility.* The SNAP program has an exception to the 30% reduction, which applies in some circumstances to one- or two-person households that would still receive the minimum benefit (*i.e.,* would have benefits reduced by less than 30% of the increases in income). See the Congressional Research Service's *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility,* summary, available at *https://sgp.fas.org/crs/misc/R42054.pdf.*

[45] State eligibility requirements vary by State, and State and Federal income requirements may be different. In some instances, an applicant's or recipient's income may make them ineligible for Federal SSI payments but they may still qualify for State SSI payments.

[46] The commenter referred to figures provided in the NPRM. In the NPRM, we estimated that the transfer from the government to SSI recipients, for the period of FYs2023 through 2032, represents an increase in Federal SSI payments of 0.2%.

[47] 42 U.S.C. 405(a); *see also* 42 U.S.C. 1383(d)(1) (stating that the provisions of 42 U.S.C. 405(a) shall apply for relevant title XVI purposes ''to the same extent as they apply in the case of title II''); 42 U.S.C. 902(a)(5) (''The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration.'').

[48] *Heckler* v. *Campbell,* 461 U.S. 458, 466 (1983) (''Congress has conferred on the [Commissioner] exceptionally broad authority to prescribe standards for applying certain sections of the Social Security Act.'') (cleaned up, citations omitted).

data to be furnished, and the reporting of events and changes in circumstances ''as may be necessary for the effective and efficient administration'' of the SSI program.[49] The commenter did not articulate why, in their view, there is any ''reason to hesitate before concluding that Congress meant to confer'' authority to adopt this rule.[50]

Regarding timing, we are always looking for ways to improve and simplify our program rules and policies.

Comment: A commenter expressed that there are technical inadequacies in the NPRM, such as ''no evidence'' that the estimated 16 percent of recipients currently evaluated under the VTR rule would now be evaluated under the PMV rule, and that the Consumer Price Index (CPI), which excludes food from its assessment, is irrelevant to the analysis.

Response: SSA's OCACT used information about whether recipients receive SNAP benefits, which is collected during the initial claim and redetermination processes, among other administrative data, to estimate that roughly 16% of recipients who are evaluated under the VTR according to current rules would be evaluated under the PMV according to the rules as stated in the NPRM. As discussed above, we have revised the questions we ask about food, and will instead ask a single question that does not directly address SNAP. However, we assume that recipients who receive SNAP do not have all their meals provided by others within their household and, thus, would also be evaluated under the PMV rule. OCACT estimates that additional recipients who would have been evaluated under the VTR rule under the NPRM will now be evaluated under the PMV rule. However, OCACT estimates that very few such recipients would have a change in SSI payment. Further, our reference to certain types of CPI measures that exclude food was meant to illustrate that many economic analysts consider food prices to be significantly more volatile than the prices of most other types of goods and services. We did not use these types of CPI measures in our quantitative analysis of the rule.

Comment: One commenter asked us to post separately all the citations they provided in their comments as part of our formal administrative record for purposes of the Administrative Procedure Act.

Response: Consistent with our standard procedures, we posted publicly all relevant comments[51] and made them available within docket SSA–2021–0014 on *www.regulations.gov.* We consider public comments as part of the rulemaking record. Any citations commenters provided within public comment submissions are viewable by the public within the comment submissions.

Request for Further Policy Changes in the Overall Area of ISM

Comment: Some commenters expressed that this proposal was a good ''first step,'' but advised that we should make additional reforms, such as omitting ISM from our program entirely, revising calculations for married recipients, raising benefit amounts, and raising savings limits.

Response: We are unable to consider eliminating ISM entirely, because it is required by the Social Security Act.[52] We acknowledge the commenters' suggestions regarding revising calculations for married recipients, raising payment amounts, and raising savings limits. However, such suggestions unrelated to the consideration of food in the ISM calculations are outside the scope of this rulemaking. Similarly, the additional ISM-related rules that commenters suggested are outside the scope of this rulemaking.

Comment: Multiple commenters suggested changes related to how we consider shelter expenses and contributions in our ISM calculations. For example, one commenter suggested that ISM based on shelter costs should apply only when the shelter is fixed and stable, and should not apply for recipients who are transient with no fixed abode.

Other commenters suggested that we redefine how we count shelter assistance and minimize housing expenses in the calculations of ISM. They expressed that we could more narrowly define shelter to include assistance with utilities or omit utilities from shelter expenses—because rent and mortgage payments pay for access to shelter—and utilities could be seen as amenities in some cases.

Another commenter suggested that we accept self-verification of housing costs and contributions, because it can be difficult for SSI recipients to obtain statements from their landlords or friends with whom they are staying and to confirm their precise living arrangement because many living arrangements are verbal. According to the commenter, people who themselves do not receive SSI, but who rent a room to an SSI recipient, may be reluctant to provide information about their mortgage, utility costs, or property tax payments to an agency from which they receive no direct support.

Response: We acknowledge the suggestions related to the consideration of shelter expenses and contributions. However, these suggestions are outside the scope of this rulemaking.

Comment: One commenter recommended changing the way we treat cash gifts received directly by an SSI applicant or recipient. The commenter asserted that, in the context of ''rent help'' from a family member or friend, the distinction we make between third-party payments (ISM) and cash gifts has material consequences, because the SSI reduction from third-party payments (ISM) is capped at the one-third ISM limit, while there is no cap for cash gift income. The commenter characterized this distinction as ''arbitrary and meaningless for SSI recipients because the intent and effect in both instances is identical (*i.e.,* covering rent).''

Response: This suggestion is not related to removing food from the ISM calculations and is outside the scope of this rulemaking.

Comment: Some commenters suggested publishing regulations to expand the definition of ''public assistance household,'' to expand the applicability of a rental subsidy policy, and to exclude from the definition of ISM items with no current market value.

Response: Our Regulatory Agenda includes two proposed rules similar to these suggestions: *Expand the Definition of a Public Assistance (PA) Household,* RIN 0960–AI81; and *Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients,* 0960–AI82. We listed these proposed rules in the *Spring 2023 Unified Agenda (Agenda) of Regulatory and Deregulatory Actions.* The *Agenda* comprises regulatory items we are actively pursuing and is available at *https://www.reginfo.gov/public/do/eAgendaMain.* On August 24, 2023, we published an NPRM, *Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients,* which proposes to revise our regulations by applying nationwide the ISM rental subsidy exception, currently in place for SSI applicants and recipients residing in seven States, that recognizes a ''business arrangement'' exists when the amount of required monthly rent equals or exceeds the

[49] 42 U.S.C. 1383(e)(1)(A); *see also* 42 U.S.C. 1383b(a).

[50] *West Virginia* v. *EPA,* 142 S. Ct. 2587, 2608 (2022) (quotation omitted).

[51] We excluded comments that were exact duplicates submitted by the same commenter.

[52] See 42 U.S.C. 1382a(a)(2)(A).

PMV.[53] Likewise, on September 29, 2023, we published another NPRM, *Expand the Definition of a Public Assistance Household,*[54] which proposes to expand our definition of a public assistance household to include SNAP as an additional means-tested public income-maintenance (PIM) program under 20 CFR 416.1142(a).

Opposition to the New Policy

Comment: One commenter maintained that ISM should continue and said that because SSI is a ''needs-based'' program, if someone is receiving food assistance, their ''needs-based'' benefit should be reduced. Further, the commenter stated that if the change is implemented, we should revise POMS to include SNAP as income and eliminate the earned and unearned income exclusion(s). The commenter also asserted that the proposal is just a way for us to address insufficient staffing by making SSI program administration easier by ''passing on the burden to the taxpayers.'' According to the commenter, our proposal was ''speculative'' when we assumed that individuals will, for example, pay more for shelter if they no longer have to pay food expenses. Further, the commenter stated that recipients are ''receiving welfare from U.S. taxpayers without contributing to the system'' and should therefore be subjected to ''additional scrutiny for each benefit'' they receive, and that such benefits should reduce recipients' monthly payments.

Response: We will continue to consider ISM in our payment calculations. Although we are removing a variable from the ISM calculations, we will still require applicants and recipients to establish that their income and resources are below existing limits to receive payments.

Regarding the suggestion to revise POMS to include SNAP as income and eliminate the earned and unearned income exclusion(s), changes to the way we consider SNAP benefits and changes to the earned and unearned income exclusion(s) are outside the scope of this rulemaking. Further, income exclusions are provided by Federal statute, whether the Social Security Act [55] or another Federal statute,[56] meaning that we could not eliminate them through administrative action.

Lastly, we carefully review the details of each case to ensure we pay the correct benefits to the correct individual at the correct time.

Comment: Several commenters expressed concerns based on misunderstandings about the perceived effects or consequences of our proposal. For example, commenters asserted that the rule would: require recipients to work; cut benefits for recipients; have negative consequences for recipients in light of rising housing costs across the country; and motivate people to falsify information to receive the maximum benefit possible. Additional commenters expressed concerns that the only benefit of the proposal is simplifying the SSI application process; the money received from SSI might not be enough to keep up with increasing food costs; and we should keep the current rules because there are people outside of the U.S. that need help, too.

Response: This final rule does not require applicants and recipients to work; is anticipated to be advantageous to many applicants and recipients; and is not projected to have consequences related to housing costs. Regarding motivating people to falsify information, we remain committed to preventing, detecting, and eliminating fraud in our programs and encourage anyone with concerns about fraud to visit *https://www.ssa.gov/fraud*.[57] In addition, while removing food from the ISM calculation may help ease the burden of rising food costs for some recipients, increasing SSI payments is not within the scope of this rulemaking. Regarding assisting people outside the U.S., the scope of this rulemaking is limited to SSI applicants and recipients. Because SSI payments are available to eligible individuals who live in the 50 States, Washington, DC, and the Northern Mariana Islands, the geographic scope of this rule is limited to residents of these places.[58]

Comments in Support of the Policy

Comment: The majority of the comments were supportive of the new policy. Many commenters cited a family member or friend they thought might be helped by this regulation. Others expressed that people should be able to accept meals without considering if their payments would be reduced. Some advocacy groups expressed the opinion that calculating SSI payments using a food cost estimate can be ''arbitrary'' and ''inaccurate,'' and so they were supportive of removing that requirement. Yet others asserted that the proposed changes would simplify our rules and reduce burdens on SSI recipients. Additional commenters said the rule would promote equity by not disadvantaging an already vulnerable population, and that the rule would incentivize SSI recipients to use their community support with ''less anxiety'' about negative impacts that could result from this support. Another commenter stated that the proposed rule might facilitate increased food security, which could lead to a ''greater sense of well-being and better health outcomes.''

Response: We acknowledge the comments submitted in support of this rulemaking.

Regulatory Procedures

E.O. 12866, as Supplemented by E.O.s 13563 and Amended by 14094

We have consulted with the Office of Management and Budget (OMB) and OMB has determined that this final rule meets the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and amended by E.O. 14094, and is subject to OMB review.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this final rule for all eligibility and payment determinations effective April 1, 2024, and later will result in an increase in Federal SSI payments of a total of about $1.6 billion over the period of FYs 2024 through 2033. We refer the reader to the NPRM for our detailed analysis.

Anticipated Administrative Costs and Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this regulation will result in a total net administrative savings of $26 million for the 10-year period from fiscal year (FY) 2024 to FY 2033. This estimate includes processing time savings as field office employees will not have to spend time explaining and developing food as part of ISM during initial claims, pre-effectuation reviews, redeterminations, and post-eligibility actions. The aforementioned savings are partially offset by costs to update our systems to remove food from the ISM calculations, to send notices to inform current recipients of the policy changes, and to

[53] See 88 FR 57910.

[54] See 88 FR 67148. We note that as part of this NPRM we are seeking public comment on expanding the definition of a public assistance household to include households in which *any other* (as opposed to *every other*) member receives public assistance.

[55] *See* 42 U.S.C. 1382a(b).

[56] For example, the income exclusion for SNAP benefits is provided by the Food and Nutrition Act, at 7 U.S.C. 2017(b).

[57] In addition, we are required to verify information. 42 U.S.C. 1383(e)(1)(B) requires, ''that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.''

[58] 20 CFR 416.215.

address inquiries from the notices. Under the final rule, more individuals will be eligible for SSI payments than under the current regulation, resulting in costs to process additional claims, reconsiderations, appeals, continuing disability reviews, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits

As discussed in the NPRM, we anticipate qualitative benefits from this final rule because it will simplify our policy and make the SSI claims process easier for applicants and recipients. The public benefits from simplifications to our program because it may take less time and effort to understand our program and its requirements and may make it easier to comply with the program's requirements. Also, because SSI applicants and recipients will not need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting us to report this information. See the Paperwork Reduction Act section of the NPRM's preamble for more details on the burden reduction associated with this rule.

The time we save on processing SSI applications is only a limited component of the overall time-savings to the public. Recipients will no longer need to report monthly changes in the value of food support they receive. Additionally, reporting food support, whether on the initial application or at a later point during post-award eligibility review, oftentimes requires us to further develop this support, which may require completion of a variety of information collections and forms as discussed in the Paperwork Reduction Act section of the NPRM's preamble. Time savings in completing these forms not only benefits applicants and recipients, but also third parties. While we do not maintain administrative data on the volume of post-award information collections pertaining to food-support reporting, we anticipate administrative time savings.

In many situations, recipients fail to timely report receiving food support. This requires us to develop the issue after a recipient's monthly payment amount has been paid. This, in turn, may create an overpayment, which would require us to develop the issue further and contact the recipient for an interview. As discussed in the NPRM, we expect that simplifying the ISM calculation may reduce improper payments. The overpayment recovery process can be a time-intensive process to navigate, particularly for recipients seeking to have their overpayment waived or reconsidered. While we have not quantified the amount of time recipients spend working to resolve overpayments related to food ISM, we anticipate that this final rule may result in time savings associated with reduced improper payments.

Further, as discussed in the NPRM, there are potential qualitative benefits to this final rule such as reduced food insecurity, enhanced social support networks, reduced frustration and anxiety among the SSI population associated with understanding and complying with complicated food-support ISM policies, potentially enhanced dignity with elimination of the need to report receipt of food to the government (which may appear intrusive to some applicants and recipients), and more consistent and equitable treatment of applicants' and recipients' various sources of food assistance.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as meeting the criteria in 5 U.S.C. 804(2).

E.O. 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132, and determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities, as it affects individuals or States only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act (PRA)

Since under this final rule we will no longer need to consider food expenses for in-kind support and maintenance calculations, we are making minor changes to Forms SSA–8202–BK, Statement for Determining Continuing Eligibility for Supplemental Security Income Payment (OMB Control No. 0960–0145); SSA–8006, Statement of Living Arrangements, In-Kind Support and Maintenance (OMB Control No. 0960–0174); SSA–8000–BK, Application for Supplemental Security Income (OMB Control No. 0960–0229); SSA–8203–BK, Statement for Determining Continuing Eligibility for Supplemental Security Income Payment (OMB Control No. 0960–0416); SSA–8011, Statement of Household Expenses and Contributions (OMB Control No. 0960–0456); and SSA–5062 & SSA–L5063, Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another (OMB Control No. 0960–0529).

The form changes will result in a burden reduction of one minute per response, for a total burden savings of 95,668 hours. This figure represents the difference between the previous and new total estimated annual burden (as shown in the chart below).

Below are charts showing the revised burden estimates that will be effective upon the effective date of the final rule.

The following chart shows the time burden information associated with the final rule:

OMB #; form #; CFR citations	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960–0145 SSA–8202 (Paper Form)	67,698	1	21	23,694	20	22,566	1,128
0960–0145 SSA–8202 Claims System)	1,764,207	1	20	588,069	19	558,666	29,403
0960–0174 SSA–8006 (Paper Form)	12,160	1	7	1,419	6	1,216	203
0960–0174 SSA–8006 (SSI Claims System)	109,436	1	7	12,768	6	10,944	1,824
0960–0229 SSA–8000 (Paper Form)	705	1	40	470	39	458	12
0960–0229 SSA–8000 (SSI Claims System)	1,646,520	1	35	960,470	34	933,028	27,442
0960–0416 SSA–8203 (Paper Form)	135,357	1	20	45,119	19	42,863	2,256
0960–0416 SSA–8203 (SSI Claims System)	1,468,220	1	19	464,936	18	440,466	24,470
0960–0456 SSA–8011 (Paper Form)	21,000	1	15	5,250	14	4,900	350

OMB #; form #; CFR citations	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960–0456 SSA–8011 (SSI Claims System)	398,759	1	15	99,690	14	93,044	6,646
0960–0529 SSA–5062 (Paper Forms)	29,026	1	30	14,513	29	14,029	484
0960–0529 SSA–5062 (SSI Claims System)	29,026	1	20	9,675	19	9,192	483
0960–0529 SSA–L5063 (Paper Forms)	29,026	1	30	14,513	29	14,029	484
0960–0529 SSA–L5063 (SSI Claims System)	29,026	1	20	9,675	19	9,192	483
Totals	5,740,116			2,250,261		2,154,593	95,668

The following chart shows the theoretical cost burdens associated with the final rule:

OMB #; form #	Number of respondents	Anticipated estimated total burden under regulation from chart above (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
0960–0145 SSA–8202 (Paper Form)	67,698	22,566	*$12.81	**24	***$635,952
0960–0145 SSA–8202 Claims System)	1,764,207	558,666	*12.81	**21	***15,066,328
0960–0174 SSA–8006 (Paper Form)	12,160	1,216	*12.81	**24	***77,885
0960–0174 SSA–8006 (SSI Claims System)	109,436	10,944	*12.81	**21	***630,854
0960–0229 SSA–8000 (Paper Form)	705	458	*21.29	**21	***15,009
0960–0229 SSA–8000 (SSI Claims System)	1,646,520	933,028	*21.29	**21	***32,133,210
0960–0416 SSA–8203 (Paper Form)	135,357	42,863	*21.29	**21	***1,921,167
0960–0416 SSA–8203 (SSI Claims System)	1,468,220	440,466	*21.29	**21	***20,317,962
0960–0456 SSA–8011 (Paper Form)	21,000	4,900	*29.76	**21	***364,560
0960–0456 SSA–8011 (SSI Claims System)	398,759	93,044	*29.76	**21	***6,922,474
0960–0529 SSA–5062 (Paper Forms)	29,026	14,029	*21.29	**24	***545,854
0960–0529 SSA–5062 (SSI Claims System)	29,026	9,192	*21.29	**21	***411,983
0960–0529 SSA–L5063 (Paper Forms)	29,026	14,029	*21.29	**24	***545,854
0960–0529 SSA–L5063 (SSI Claims System)	29,026	9,192	*21.29	**21	***411,983
Totals	5,740,116	2,154,593			***80,001,075

*We based these figures on the average Disability Insurance (DI) payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*); and the average of both DI payments and the average U.S. citizen's hourly salary.

**We based these figures on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA is submitting a single new Information Collection Request (ICR) which encompasses the revisions to above listed information collections (currently under OMB Numbers 0960–0145, 0960–0174, 0960–0229, 0960–0416, 0960–0454, and 0960–0529) to OMB for the approval of the changes due to the final rule. After approval of this combined ICR, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden via Change Request.

We published a notice of proposed rulemaking on February 15, 2023, at 88 FR 9779. In response to that NPRM, individual submitted comments on PRA-related issues such as the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Please see the Comments section of the preamble for PRA-related comments and SSA's response.

Since the publication of the NPRM, we removed language and requirements, which reduces the burden on the public. Accordingly, we are currently soliciting comment on these changes and their associated burden reductions. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until April 26, 2024, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Commissioner of Social Security, Martin O'Malley, having reviewed and

approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we amend 20 CFR chapter III, part(s) 416, as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Revise § 416.1102 to read as follows:

§ 416.1102 What is income?

Income is anything that you receive in cash or in-kind that you can use to meet your needs for food or shelter. For purposes of this definition, income may be received actually or constructively. Income is received constructively, unless there are significant restrictions on your ability to receive it, if it is under your control or you can use it despite not actually receiving it. Sometimes income also includes more or less than you actually receive (see §§ 416.1110 and 416.1123(b)). In-kind income is not cash but is something else that you can use to meet your needs for food or shelter. Exception: Food is not included in the calculations of in-kind support and maintenance, which is a type of unearned income that we have special rules for valuing (see §§ 416.1130 through 416.1148).

■ 3. Amend § 416.1103 by revising paragraphs (a)(4), (b)(2), the example in paragraph (g) and paragraph (j) to read as follows:

§ 416.1103 What is not income?

(a) * * *

(4) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

* * * * *

(b) * * *

(2) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide social services; or * * *

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay your mortgage payment directly to the mortgage lender, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the transaction provides you with shelter; the mortgage payment is in-kind income for shelter to you. Similarly, if you book a hotel room on credit and your son later pays the bill, the payment to the hotel is not income to you, but the payment of the bill is in-kind income for shelter to you. In this example, if your son pays for the hotel bill in a month after the month of the hotel stay, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, the payment for the lawn service is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is not income because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

Example 2: You inherit a house which is your principal place of residence. The value of this inheritance is income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

■ 4. Amend § 416.1104 by revising the fourth sentence and removing the fifth sentence in the paragraph to read as follows:

§ 416.1104 Income we count.

* * * One type of unearned income is in-kind support and maintenance (shelter), which we value depending on your living arrangement.

* * * * *

■ 5. Amend § 416.1121 by revising paragraph (h) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(h) *Support and maintenance in-kind.* This is shelter furnished to you that we value depending on your living arrangement. (Food is not included in the calculations of in-kind support and maintenance.) We use one rule if you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals. We use different rules for other situations in which you receive shelter. We discuss all of the rules in §§ 416.1130 through 416.1148.

■ 6. Revise § 416.1130 to read as follows:

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in- kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing shelter that is received as in-kind support and maintenance (a type of unearned income). This section and the ones that follow discuss these rules. In these sections (*i.e.,* §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house and receives all of his meals from his son. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the in-kind support and maintenance he receives because he lives, throughout a month, in the household of his son, who provides all of his food and shelter. In January, we increase his SSI benefit because of a cost-of-living adjustment. For that month, we determine that the VTR rule applies by considering the food and shelter he received from his son two months earlier in November, and we calculate the SSI payment using the Federal benefit rate for January.

(b) *How we calculate in-kind support and maintenance.* (1) We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because

someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals the current market rental value (see § 416.1101). Exception: In the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). In those States, if the required amount of rent is less than the presumed maximum value, we will consider as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments made to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

(2) We have two rules for valuing the in-kind support and maintenance that we count. The one-third reduction rule applies if you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

■ 7. Amend § 416.1131 by revising paragraphs (a)(1) and (2) and adding paragraph (a)(3) to read as follows:

§ 416.1131 The one-third reduction rule.

(a) * * *

(1) Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149); and

(2) Receive shelter from others living in the household. (If you do not receive shelter from others living in the household, see § 416.1140); and

(3) Others within the household pay for or provide you with all of your meals. If others within the household do not pay for or provide you with all of your meals, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

* * * * *

■ 8. Amend § 416.1133 by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.1133 What is a pro rata share of household operating expenses.

(a) * * * (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)

* * * * *

(c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. * * *

■ 9. Revise § 416.1140 to read as follows:

§ 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or

(ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure your ISM.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

■ 10. Amend § 416.1141 by revising the introductory paragraph and paragraphs (a) and (b) to read as follows:

§ 416.1141 When the presumed value rule applies.

The presumed value rule applies whenever we count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

(a) In another person's household (as described in § 416.1132(b)); you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals;

(b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional case situation; or

* * * * *

■ 11. Amend § 416.1147 by revising paragraph (a), the paragraph heading in paragraph (b), the first sentence in paragraph (b)(1), paragraph (c), and the third sentence in paragraph (d)(1) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive shelter and all of their meals from others living in the household.* When both of you live in another person's household throughout a month, receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple is in a medical institution and the other member of the couple lives in another person's household and receives shelter and all of their meals from others living in the household.* (1) If one of you is living in the household of another person and receives shelter from others living in the household, and others within the household pay for or provide you with all of your meals, and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for their care (§ 416.211(b))), and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). * * *

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the

amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2).

(d) * * *

(1) * * * We value any shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2). * * *

* * * * *

■ 12. Amend § 416.1148 by revising paragraph (b) to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

* * * * *

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any shelter that person provides is not income to you. However, if you receive any shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

■ 13. Amend § 416.1149 by revising paragraph (c)(1) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(1)(i) If you enter a medical treatment facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical treatment facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider shelter provided during a medical confinement to be income.

(ii) If you enter a medical treatment facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

[FR Doc. 2024–06464 Filed 3–26–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 9981]

RIN 1545–BJ53

Requirements for Type I and Type III Supporting Organizations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document corrects the correction to Treasury Decision 9981, published in the **Federal Register** on November 20, 2023. Treasury Decision 9981 issued final regulations providing guidance on the prohibition on certain gifts or contributions to Type I and Type III supporting organizations from persons who control a supported organization and on certain other requirements for Type III supporting organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006.

DATES: This correction is effective on March 27, 2024, and is applicable on November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Gruccio at (202) 317–4541 (not a toll-free number), or Don Spellmann at (202) 317–4086 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9981) that are the subject of this correction are under section 509(a) of the Code.

Corrections to Publication

Accordingly, the correction to the final regulations (TD 9981) that are the subject of FR Doc. 2023–25510, published on November 20, 2023, on page 80584, in the second column, is corrected by correcting the fifth line of the heading to read ''1545–BJ53''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2024–06485 Filed 3–26–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0229]

RIN 1625–AA00

Safety Zone; Anclote River, Tarpon Springs, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Anclote River in Tarpon Springs, FL for the removal of a dredging pipe. The safety zone will encompass all waters within a 200-yard radius of the dredge vessel DIAMOND 6 and the tug vessel LADY LAFON. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by dredge work and removal of a dredging pipe. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port St Petersburg.

DATES: This temporary rule is effective without actual notice from March 27, 2024 through March 30, 2024. For the purposes of enforcement, actual notice will be used from March 24, 2024, until March 27, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0229 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Mara J. Brown, Sector St. Petersburg Waterways Management Division, Coast Guard; telephone 813–228–2191, email *Mara.J.Brown@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 statutory 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.'' The Coast Guard did not receive final details of this event until March 11, 2024. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by March 24, 2024 and lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule. Additionally, immediate action is needed to protect personnel, vessels, and the marine environment in the Anclote River within the safety zone while the removal of a dredging pipe is underway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the removal of a dredging pipe located in the Anclote River in Tarpon Springs, FL.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector St Petersburg (COTP) has determined that potential hazards associated with removal of a dredging pipe beginning on March 24, 2024, will be a safety concern for anyone within a 200-yard radius of the dredge vessel DIAMOND 6 and tug vessel LADY LAFON. This rule is needed to ensure the safety of vessels and persons in the navigable waters within the safety zone during the removal of the dredging pipe.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 a.m. on March 24, 2024, through 7 p.m. on March 30, 2024. The safety zone will cover all navigable waters within 200 yards of the Dredge DIAMOND 6 and Tug LADY LAFON, located on the Anclote River, approximate position at Latitude: 28°9′21.51″ N, Longitude: 82°45′58.68″ W. The duration of the zone is intended to ensure the safety of vessels and persons during the removal of the dredging pipe. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration, narrowly tailored geographic area, and scope of the safety zone. Although the rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimal impact during the 9 hours per day of the dredging pipe removal. It is limited in scope as vessel traffic may seek permission from the COTP to enter the zone. Additionally, vessel traffic will be able to safely transit around the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 9 hours per day that will prohibit entry within 200 yards of the dredge vessel DIAMOND 6 and the tug vessel LADY LAFON. 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0229 to read as follows:

§ 165.T07–0229 Safety Zone; Anclote River, Tarpon Springs, FL.

(a) *Location.* The following regulated area is a safety zone: All navigable waters of Anclote River, from surface to bottom, within a 200-yard radius of the dredge vessel DIAMOND 6 and the tug vessel LADY LAFON in the approximate position latitude 28°09′23″ N, longitude 082°45′58″ W. These coordinates are based on the 1984 World Geodetic System.

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

(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) To seek permission to enter, contact the COTP or the COTP's representative by Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Effective and enforcement period.* This rule will be effective from 10 a.m. on March 24, 2024, through 7 p.m. on March 30, 2024.

Dated: March 20, 2024.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2024–06436 Filed 3–26–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403320–4891–02; RTID 0648–XD749]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; 2024–2025 Recreational Fishing Season for Black Sea Bass

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

ACTION: Temporary rule; recreational fishing season.

SUMMARY: NMFS announces that the recreational fishing season for black sea bass in South Atlantic Federal waters will extend throughout the species' 2024–2025 fishing year. Announcing the length of recreational fishing season for black sea bass is one of the accountability measures (AMs) for the recreational sector. This announcement allows recreational fishers to maximize their opportunity to harvest the recreational annual catch limit (ACL) for black sea bass while NMFS manages harvest to protect the black sea bass resource.

DATES: This temporary rule is effective from April 26, 2024, through March 31, 2025.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery includes black sea bass south of 35°15.19′ N latitude, due east of Cape Hatteras Light, North Carolina, and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Black

sea bass is not managed by the FMP or regulated by 50 CFR part 622 north of 35°15.19′ N latitude in South Atlantic Federal waters, the latitude of Cape Hatteras Light, North Carolina; black sea bass north of 35°15.19′ N latitude is regulated by 50 CFR part 648.

The recreational fishing year for black sea bass is April 1 through March 31. One of the recreational AMs for black sea bass requires that before the April 1 start date of each recreational fishing year, NMFS will project the length of the recreational fishing season based on when NMFS projects recreational landings of black sea bass will reach its ACL, and announce the recreational season end date in the **Federal Register** [50 CFR 622.193(e)(2)]. The purpose of this AM is to allow recreational fishermen to maximize their opportunities to harvest the recreational ACL through a more predictable recreational season while NMFS manages harvest within the recreational ACL to protect the stock from experiencing adverse biological consequences.

The recreational ACL for black sea bass during the 2024–2025 fishing year is 310,602 pounds (lb) or 140,887 kilograms (kg) in gutted weight, or 366,510 lb (166,246 kg) in round weight [50 CFR 622.193(e)(2)].

NMFS estimates that recreational landings of black sea bass during the 2024–2025 fishing year will be less than the 2024–2025 recreational ACL. To make this determination, NMFS compared recreational landings of black sea bass in the last 3 fishing years with available data (2020–2021 through 2022–2023) to the recreational ACL for the 2024–2025 fishing year. Recreational landings in each of these past 3 fishing years have been less than the 2024–2025 recreational ACL, and NMFS expects similar landings for the 2024–2025 fishing season. Therefore, because NMFS projects that the recreational landings of black sea bass will be less than the 2024–2025 recreational ACL, NMFS does not expect to close the recreational harvest of black sea bass during the fishing year. Accordingly, the season end date for the recreational harvest of black sea bass in South Atlantic Federal waters is March 31, 2025.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(e)(2), issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. Such procedures are unnecessary because the rule establishing the recreational AM has already been subject to notice and comment, and all that remains is for NMFS to notify the public of the recreational season length.

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

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06525 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819686–5999–02; RTID 0648–XD760]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2024 Commercial Accountability Measure and Catch Limit Reduction for Gag in the South Atlantic

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

ACTION: Temporary rule; commercial accountability measure.

SUMMARY: NMFS implements an accountability measure (AM) for the commercial harvest of gag in South Atlantic Federal waters. NMFS has determined that commercial landings of gag exceeded the commercial annual catch limit (ACL) in 2023, and other triggers for the commercial AMs are met. Therefore, NMFS reduces the commercial ACL of gag in the 2024 fishing year by the amount of gag landings that exceeded the 2023 commercial ACL to protect the gag resource from overfishing and continue to allow the recovery of this overfished stock.

DATES: This temporary rule is effective on April 26, 2024.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gag and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and NMFS, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are in gutted weight.

On October 23, 2023, NMFS implemented the final rule for Amendment 53 to the FMP (88 FR 65135, September 21, 2023). Among other measures, Amendment 53 established a rebuilding plan for the gag stock, which is overfished and is included in the most recent Status of U.S. Fisheries Report to Congress (2022). The final rule specified the 2024 commercial ACL for gag at 128,096 pounds (lb) or 58,103 kilograms (kg) [50 CFR 622.190(a)(7)(ii)].

Regulations in § 622.193(c)(1) state the AMs applicable to the commercial harvest of gag. The post-season AMs for the commercial sector state that NMFS will reduce the commercial ACL in the following fishing year by the amount of the commercial ACL overage in the previous year if the following criteria are also met: 1. the combined commercial and recreational ACL specified in § 622.193(c)(3) is exceeded during the same fishing year, and 2. the gag stock is overfished based on the most recent Status of U.S. Fisheries Report to Congress [50 CFR 622.193(c)(1)(ii)].

Also on the effective date of final rule for Amendment 53, NMFS closed the commercial harvest of gag for the remainder of the year because NMFS projected that commercial landings of gag had exceeded the new 2023 commercial ACL of 85,326 lb (38,703 kg) (88 FR 68497, October 4, 2023). Current estimates of commercial landings of gag during 2023 are 150,500 lb (68,266 kg). These preliminary landings exceed the recently implemented commercial ACL for gag by 65,174 lb (29,562 kg). Preliminary landings of gag by the recreational sector in 2023 are 472,321 lb (214,241 kg) and the new 2023 recreational ACL was 90,306 lb (40,962 kg). Therefore, NMFS estimates that 2023 landings of gag exceeded the combined commercial and recreational ACL of 175,632 lb (79,665 kg).

Because the criteria for gag post-season AMs are met, NMFS must reduce the commercial ACL in 2024 by the amount that commercial landings exceeded the commercial ACL during 2023. Therefore, NMFS reduces the commercial ACL for gag in 2024 to 62,922 lb (28,541 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(c)(1)(ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the commercial ACLs and AMs for gag have already been subject to notice and comment, and all that remains is to notify the public of the reduced commercial ACL for 2024. Such procedures are contrary to the public interest because of the need to protect the gag resource and to provide advance notice to commercial fishermen of the change to the commercial ACL for gag.

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

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06534 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068; RTID 0648–XD798]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher/processors (CPs) in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2024 total allowable catch (TAC) of Pacific cod allocated to AFA trawl CPs in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 25, 2024, through 1200 hours, A.l.t., November 1, 2024. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 11, 2024.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2023–0124, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter OAA–NMFS–2023–0124 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

NMFS closed directed fishing for Pacific cod by AFA trawl CPs in the BSAI under § 679.20(d)(1)(iii) on January 20, 2024 (89 FR 4210, January 23, 2024).

NMFS has determined that as of March 21, 2024, approximately 2,600 metric tons of Pacific cod remain in the 2024 Pacific cod TAC allocated to the AFA trawl CPs in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2024 TAC of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by AFA trawl CPs in the BSAI. The Administrator, Alaska Region, NMFS, considered the following factors in reaching this decision: (1) the current catch of Pacific cod by AFA trawl CPs in the BSAI; and (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for Pacific cod by AFA trawl CPs in the BSAI. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of March 21, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by AFA trawl CPs in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 11, 2024.

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

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06524 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 60
Wednesday, March 27, 2024

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.

FEDERAL TRADE COMMISSION

16 CFR Part 464

[Docket ID FTC–2023–0064]

RIN 3084–AB77

Trade Regulation Rule on Unfair or Deceptive Fees

AGENCY: Federal Trade Commission

ACTION: Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') recently published a notice of proposed rulemaking (''NPRM'') in the **Federal Register**, titled ''Rule on Unfair or Deceptive Fees,'' which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The NPRM announced the opportunity for interested parties to present their positions orally at an informal hearing. Seventeen commenters requested to participate at the informal hearing. The Commission's Chief Presiding Officer, the Chair, has appointed an Administrative Law Judge for the Federal Trade Commission, the Honorable Jay L. Himes to serve as the presiding officer of the informal hearing.

DATES:

Hearing date: The informal hearing will be conducted virtually on April 24, 2024, at 10 a.m. Eastern.

Participation deadline: If you are a Hearing Participant and would like to submit your oral presentation in writing or file a supplementary documentary submission, you must do so on or before April 10, 2024.

ADDRESSES: Hearing Participants may submit their oral presentations in writing or file supplementary documentary submissions, online or on paper, by following the instructions in part IV of the **SUPPLEMENTARY INFORMATION** section below. Write ''Unfair or Deceptive Fees Rule (16 CFR part 464) (R207011)'' on your submission and send it electronically to *electronicfilings@ftc.gov,* with a copy to *OALJ@ftc.gov.* If you prefer to file your submission on paper, mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janice Kopec or Spencer Jackson-Kaye, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2550 (Kopec), 202–975–8671 (Jackson-Kaye), *jkopec@ftc.gov, sjacksonkaye@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Following public comment on an advance notice of proposed rulemaking, 87 FR 67413 (Nov. 8, 2022), the FTC published a notice of proposed rulemaking (''NPRM''), 88 FR 77420 (Nov. 9, 2023), entitled ''Rule on Unfair or Deceptive Fees,'' in the **Federal Register**, proposing to add part 464 to 16 CFR, to prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. A month before the NPRM was published in the **Federal Register** for a 90-day public comment period, the Commission released a preliminary copy of the NPRM in a press release on October 11, 2023.

In accordance with section 18(b)(1) of the FTC Act, 15 U.S.C. 57a(b)(1), which requires the Commission to provide the opportunity for an informal hearing in section 18 rulemaking proceedings, the NPRM also announced the opportunity for interested persons to present their positions orally at an informal hearing. Eight of the commenters requested the opportunity to present their position orally or participate at an informal hearing. Nine additional commenters requested the opportunity to participate in a hearing if one were held but did not request a hearing themselves.

II. The Requests for an Informal Hearing; Presentation of Oral Submissions

Section 18 of the FTC Act, 15 U.S.C. 57a, as implemented by the Commission's Rules of Practice, 16 CFR 1.11(e),[1] provides interested persons with the opportunity to present their positions orally at an informal hearing upon request.[2] To make such a request, a commenter must submit, no later than the close of the comment period for the NPRM, (1) a request to make an oral submission, if desired; (2) a statement identifying the interested person's interests in the proceeding; and (3) any proposal to add disputed issues of material fact to be addressed at the hearing.[3]

The following eight commenters requested an informal hearing generally in accordance with the requirements of 16 CFR 1.11(e):[4]

1. ACA Connects—America's Communication Association (''ACA Connects'')[5]
2. American Bankers Association and Consumer Bankers Association (''Bankers Associations'')[6]
3. U.S. Chamber of Commerce (''the Chamber'')[7]

[1] The FTC Act provides that ''an interested person is entitled to present his position orally or by documentary submission (or both).'' 15 U.S.C. 57a(c)(2)(A).

[2] 16 CFR 1.11(e).

[3] 16 CFR 1.11(e)(1) through (3).

[4] In addition to this list, the Commission received a request from the Towing and Recovery Association of America, Inc. on February 23, 2024, more than two weeks after the close of the comment period, requesting an opportunity to make an oral presentation. Because any such requests must be submitted no later than the close of the comment period, 16 CFR 1.11(e), this request did not meet the requirements to be allowed an opportunity to present at an informal hearing.

[5] ACA Connects ''represents approximately 500 small and medium-sized independent companies . . . that provide broadband, phone, and video services to nearly 8 million customers and offer services to 18 percent of households nationwide.'' ACA Connects, Cmt. on NPRM at n. 1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3143.*

[6] The American Bankers Association represents ''the nation's $23.6 trillion banking industry, which is composed of small, regional and large banks.'' Bankers Associations, Cmt. on NPRM at n.1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3139.* The Consumer Bankers Association is a ''national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses.'' *Id.* at n.2.

[7] The Chamber did not fulfill the requirement to identify its interest in an informal hearing

4. NCTA—The Internet & Television Association (''NCTA'') [8]
5. International Franchise Association (''IFA'') [9]
6. BattleLine LLC [10]
7. IHRSA, the Global Health and Fitness Association [11]
8. National Taxpayers Union Foundation [12]

Gibson Dunn & Crutcher LLP (''Gibson Dunn'') also submitted a comment that referenced an informal hearing but did not identify the law firm's interests in the proceeding as required by 16 CFR 1.11(e)(2).[13] The comment nevertheless identified a list of three questions as disputed issues of material fact and recommended that the Commission permit expert testimony if it proceeds with an informal hearing. While the Commission does not find that Gibson Dunn is an interested party that requested an informal hearing,[14] the Commission, in its discretion, addresses Gibson Dunn's purported issues of material fact herein.

In addition, while the following commenters stated that an informal hearing was not necessary, they requested the opportunity to make an oral presentation if the Commission held an informal hearing at others' requests:

1. A coalition of 52 national and state consumer advocacy groups submitted by the Consumer Federation of America (''CFA'') (collectively, ''CFA consumer advocacy coalition'') [15]
2. CFA, National Consumer Law Center (''NCLC'') on behalf of its low-income clients, and the National Association of Consumer Advocates (''NACA'') (''CFA Auto Comment'') [16]
3. A coalition of 33 health and consumer protection advocacy groups submitted by Community Catalyst (''Health and Consumer Protection Coalition'') [17]
4. A coalition of 39 housing justice advocacy organizations submitted by the National Housing Law Project (''NHLP'') [18]
5. NCLC on behalf of its low-income clients, Prison Policy Initiative (''PPI''), and Stephen Raher [19]
6. Formerly Incarcerated, Convicted People and Families Movement (''FICPFM'') [20]
7. Truth in Advertising, Inc. (''*TINA.org.*'') [21]
8. NCLC (''NCLC Housing Comment'') [22]
9. Fair Price, Fair Wage Coalition [23]

The Commission finds these requests were generally adequate [24] and therefore

proceeding. *See* 16 CFR 1.11(e)(2) (containing requirements for requesting an informal hearing); U.S. Chamber of Commerce, Cmt. on NPRM (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3127*. Nevertheless, on its website, the Chamber describes itself as ''the world's largest business organization [whose] members range from the small businesses and chambers of commerce across the country that support their communities, to the leading industry associations and global corporations that innovate and solve for the world's challenges, to the emerging and fast-growing industries that are shaping the future.'' U.S. Chamber of Commerce, *https://www.uschamber.com/about*. Based on this description, the Commission will allow the Chamber to participate in the informal hearing if it so chooses.

[8] NCTA ''represents network innovators, content creators, and voice providers that connect, entertain, inform, and inspire consumers nationwide. NCTA is the principal trade association for the U.S. cable industry, . . . [which] is also the nation's largest residential broadband provider.'' NCTA, Cmt. on NPRM at n.1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3233*.

[9] IFA represents ''franchise companies in over 300 different industries, individual franchisees, and companies that support those franchise companies in marketing, law, technology, and business development.'' IFA, Cmt. on NPRM at 1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3294*.

[10] Jeremy Roseberry, of BattleLine LLC, is ''a professional with expertise in financial market structure and technological solutions for fee transparency.'' BattleLine LLC, Cmt. on NPRM at 2 (Dec. 5, 2023), *https://www.regulations.gov/comment/FTC-2023-0064-2574*.

[11] IHRSA is a trade association that represents ''health and fitness clubs, gyms, studios, sports and aquatic facilities, and industry partners.'' IHRSA, Cmt. on NPRM at 1–2 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3269*.

[12] NTUF is an organization of experts and advocates who ''engage in in-depth research projects and informative, scholarly work pertaining to taxation in all aspects'' and have worked to develop ''responsible tax administration for nearly five decades.'' NTUF, Cmt. on NPRM at (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3258*.

[13] *See generally* Gibson Dunn, Cmt. on NPRM (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3238*. Gibson Dunn also contends that any informal hearing would be constitutionally infirm. *Id.* at 10.

[14] Unlike the Chamber of Commerce, Gibson Dunn's interest in this proceeding is not readily apparent through publicly available information. The Commission has made clear that lawyers should make plain who they are representing or if they are representing their own interests. 88 FR 19024 n.14 (''The Commission reserves the right to decline any request for participation that fails to disclose the requester's identity and interest in the proceeding. Lawyers and others who act on behalf of clients or other individuals or entities should expressly identify those whom they are representing with an interest in the proceeding—or disclaim . . . that they are acting on behalf of any client.'').

[15] The comment was authored by American Economic Liberties Project, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center, National Consumers League, U.S. Public Interest Research Group and signed by 52 ''national and state consumer advocacy groups'' including the comment's authors. CFA consumer advocacy coalition, Cmt. on NPRM at 1–2 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3160*.

[16] While CFA, NCLC, and NACA submitted additional coalition comments, this comment was limited to the proposed rule's coverage of auto dealers. CFA Auto Comment, Cmt. on NPRM (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3270*.

[17] The coalition consists of 33 groups that ''focus on a range of health and consumer protection issues, including medical debt, disability rights, health equity, and economic justice.'' Health and Consumer Protection Coalition, Cmt. on NPRM at 1 (Feb. 7, 2024), *https://www.regulations.gov/docket/FTC-2023-0064/comments?filter=FTC-2023-0064-3191*.

[18] The comment was submitted on behalf of 39 ''organizations engaged in housing justice advocacy'' including the National Housing Law Project, whose ''mission is to advance housing justice for people living in poverty and their communities'' and the Housing Justice Network, which is a ''field network of over 2,000 community-level housing advocates and resident leaders . . . committed to protecting affordable housing and residents' rights for low-income families across the country.'' NHLP, Cmt. on NPRM at 1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3235*.

[19] NCLC, PPI, and Raher, Cmt. on NPRM at 1 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3283*.

[20] The FICPFM comment was signed by a coalition of 55 members and allies of FICPFM and prepared in collaboration with the Partnership for Just Housing. FICPFM ''is a national movement of directly impacted people speaking in our own voices about the need to end mass incarceration, America's current racial and economic caste system.'' FICPFM, Cmt. on NPRM at 1 (Feb. 7, 2024), *https://www.regulations.gov/docket/FTC-2023-0064/comments?filter=FTC-2023-0064-3199*.

[21] *TINA.org* is ''a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy.'' *TINA.org*, Cmt. on NPRM at 1 (Feb. 6, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3104*. *TINA.org* filed an addendum to its original comment clarifying that while it believes there are no disputed issues of material fact, it nevertheless requests participation in any hearing if the Commission determines that such disputes exist. *TINA.org*, Cmt. Addendum on NPRM (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3136*.

[22] While NCLC submitted additional coalition comments, this comment was limited to the proposed rule's relationship to rental housing fees. NCLC Housing Comment, Cmt. on NPRM (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3218*.

[23] This comment was submitted by DC Jobs With Justice, Jews United for Justice, Metro DC Democratic Socialists of America, National Women's Law Center, Restaurant Opportunities Center of DC, United Planning Organization, Max Hawla, consumer and tipped worker, and Trupti Patel, consumer and tipped worker, who are ''consumers, tipped professionals, grassroots organizations, policy organizations, and advocates in the District of Columbia that form part of the District of Columbia Fair Price, Fair Wage coalition.'' Fair Price, Fair Wage Coalition, Cmt. on NPRM at 1, 6 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3248*.

[24] The Commission notes that two commenters, the Chamber of Commerce and the IFA, did not specifically request the opportunity to present orally at an informal hearing.

will hold an informal hearing. These commenters will have the opportunity to make oral presentations during the informal hearing. The Commission does not find it necessary to identify any group of interested persons with the same or similar interest in the proceeding.[25]

III. Disputed Issues of Material Fact; Final Notice

In the NPRM, the Commission did not identify any disputed issues of material fact that needed to be resolved at an informal hearing. However, the Commission may still do so in this initial notice of informal hearing, either on its own initiative or in response to a persuasive showing from a commenter.[26] A number of commenters proposed potential disputed issues of material fact for the Commission's consideration.

ACA Connects identified the following purported disputed issues of material fact:

1. ''Do CSPs [(an abbreviation for ''communications service providers'')] engage in a widespread pattern of deceiving consumers through deceptive or misleading fee disclosures?''
2. ''Will consumers be confused by duplicative and/or conflicting disclosure requirements?''
3. ''Will the Proposed Rule impose significant costs on CSPs?''
4. ''Will the costs imposed by the Proposed Rule result in decreased competition in the communications marketplace?''
5. ''Will the Proposed Rule as applied to CSPs result in less transparency or greater consumer confusion about prices, terms, and conditions?''
6. ''Will the Proposed Rule effectively reduce consumer ''search time'' for broadband, voice, and cable services?'' [27]

The *NCTA* identified the following purported disputed issues of material fact:

1. ''Do 90% of firms (exclusive of the live-event ticketing, short-term lodging, and restaurant industries) already comply with the proposed rule?''
2. ''Will the proposed rule reduce consumers' search costs? Will the proposed rule facilitate the ability to accurately compare products?''
3. ''Do reasonable consumers expect the 'total price' 'exclusive of government charges' to exclude only government charges imposed directly on consumers?'' [28]

The *Bankers Associations* argued that ''there appears to be a 'disputed issue of material fact' . . . concerning the relationship between the disclosures required by the Proposed Rule and the disclosures required under other federal consumer financial law.'' [29]

The *Chamber* did not articulate the disputed issues in the form of questions but recommended ''an informal hearing with an opportunity for cross-examination of witnesses or workshop to explore'':

1. ''consumer expectations about fees or charges consumers expect to be included with the purchase of a product or service,''
2. ''how displaying Total Price more prevalent than any other pricing information will impact consumer's understanding of and access to cost-saving discounts and rebates,''
3. ''the impact of extensive fee disclosures early in the purchasing process on consumer's understanding of fees most likely to generate additional costs post-purchase or most relevant to the consumer's purchasing decision,''
4. ''the procompetitive impacts or efficiencies of partitioned or drip pricing,'' and
5. ''whether a fee disclosure that complies with the Commission's 'Total Price' requirements is easier for a consumer to navigate, understand, and comparison shop than (1) disclosures that provide item price information separate from dynamic or variable fees or (2) where dynamic or variable fees vary, similar to shipping and carriage costs, depending on characteristics of the order not ascertainable until the consumer provides information or makes order selections.'' [30]

The *IFA* did not independently identify any disputed issues of material fact in its request for an informal hearing, but it appeared to endorse those raised by the Chamber.[31]

Finally, *Gibson Dunn* stated that ''[a]mong others, there are factual questions relating to (1) whether the practices are 'deceptive' or 'unfair,' (2) whether such unfair or deceptive practices are 'prevalent,' and (3) the extent to which the Proposed Rule's substantial costs outweigh the relatively marginal benefits, given disputes over what costs the Rule would impose, what benefits it would present, and how those costs and benefits would be reflected in various industries.'' [32] Although Gibson Dunn failed to meet the requirements of 16 CFR 1.11(e) in several respects, the Commission will nevertheless address these purported issues of material fact in this document.

To be appropriate for cross-examination or rebuttal, a disputed issue of material fact must raise ''specific facts'' that are ''necessary to be resolved'' [33] and not ''legislative facts.'' [34] Unlike specific facts, legislative facts ''help . . . determine the content of law and of policy'' and do not need to ''be developed through evidentiary hearings'' because they ''combine empirical observation with application of administrative expertise

---

[25] 16 CFR 1.12(a)(5) requires the initial notice of informal hearing to include a ''list of the groups of interested persons determined by the Commission to have the same or similar interests in the proceeding.'' 16 CFR 1.12(d) explains that the Commission ''will, if appropriate, identify groups of interested persons with the same or similar interests in the proceeding.'' Doing so facilitates the Commission's ability to ''require any group of interested persons with the same or similar interests in the proceeding to select a single representative to conduct cross-examination on behalf of the group.'' *Id.*

[26] *See* 16 CFR 1.12(a)(3); 15 U.S.C. 57a(c)(2)(B); *see also* 88 FR 77420, 77440 (Nov. 9, 2023).

[27] ACA Connects, Cmt. on NPRM at 15–16.

[28] NCTA, Cmt. on NPRM at 31–32.

[29] Bankers Associations, Cmt. on NPRM at 8.

[30] Chamber, Cmt. on NPRM at 19–21.

[31] IFA, Cmt. on NPRM at 13. The IFA noted that ''in the Chamber Comment and IHRSA [comments], there are disputed issues of material fact needing to be resolved and requiring an informal hearing.'' However, IHRSA did not raise any disputed issues of material fact in their comment filed in this proceeding.

[32] Gibson Dunn, Cmt. on NPRM at 10 (Feb. 7, 2024), *https://www.regulations.gov/comment/FTC-2023-0064-3238*.

[33] *See, e.g.,* 16 CFR 1.13(b)(1)(i) (issues that ''must'' be considered for cross-examination or rebuttal are only those disputed issues of fact the Commission determines to be ''material'' and ''necessary to resolve'').

[34] 16 CFR 1.12(b)(1) (''An issue for cross-examination or the presentation of rebuttal submissions, is an issue of specific fact in contrast to legislative fact.''). ''The only disputed issues of material fact to be determined for resolution by the Commission are those issues characterized as issues of specific fact in contrast to legislative fact. It was the judgment of the conferees that more effective, workable and meaningful rules will be promulgated if persons affected by such rules have the opportunity afforded by the bill, by cross-examination and rebuttal evidence or other submissions, to challenge the factual assumptions on which the Commission is proceeding and to show in what respect such assumptions are erroneous.'' H.R. Rep. No. 93–1606, at 34 (Dec. 16, 1974) (Conf. Rep.). Further, as explained in *Association of National Advertisers, Inc.* v. *FTC,* 627 F.2d 1151, 1164 (D.C. Cir. 1979), the distinction between ''specific fact'' and ''legislative fact'' grew out of a recommendation from the Administrative Conference of the United States (ACUS):

> Conference Recommendation 72–5 is addressed exclusively to agency rulemaking of general applicability. In such a proceeding, almost by definition, adjudicative facts are not at issue, and the agency should ordinarily be free to, and ordinarily would, proceed by the route of written comments, supplemented, perhaps, by a legislative-type hearing. Yet there may arise occasionally in such rulemaking proceedings factual issues which, though not adjudicative, nevertheless justify exploration in a trial-type format because they are sufficiently narrow in focus and sufficiently material to the outcome of the proceeding to make it reasonable and useful for the agency to resort to trial-type procedure to resolve them. These are what the Recommendation refers to as issues of specific fact.

Id. at 1164.

to reach generalized conclusions.'' [35] The relevant legislative history explains that ''disputed issues of material fact necessary to be resolved'' should be interpreted narrowly.[36] In this context, ''disputed'' and ''material'' are given the same meaning as in the standard for summary judgment.[37] As in summary judgment, the challenging party must do more than simply assert there is a dispute regarding the Commission's findings. If those findings are otherwise adequately supported by record evidence, the challenging party must come forward with sufficient evidence to show there is a genuine, *bona fide* dispute over material facts that will affect the outcome of the proceeding.[38]

The purported disputed issues of material fact described above fall generally into several categories: the Commission's determination of unfair or deceptive practices, the Commission's finding of prevalence, the relationship between the proposed rule's obligations and those imposed by existing rules and regulations, and the Commission's cost-benefit analysis. In addition, one commenter raised questions about the scope of the proposed rule's definition of Government Charges.

First, two commenters raised questions regarding the Commission's findings that pricing structures that do not initially disclose the total mandatory cost of a good or service are deceptive or unfair.[39] These arguments do not raise disputed issues of material fact because they are legal and legislative issues rather than specific issues of fact. Whether the practices of misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees are unfair or deceptive are legal questions. The Commission established the unfairness and deceptiveness of these practices through legal analysis in section III.A–B of the NPRM.[40] Even if these questions were questions of specific fact, they do not raise *bona fide* disputes because the Commission has supported its findings with evidence, and the commenters have not introduced their own evidence to contradict the Commission.[41]

Second, two commenters argued that the Commission's finding that bait-and-switch pricing practices are prevalent was a disputed fact.[42] The Commission must make two findings regarding prevalence if it promulgates a rule under section 18. First, the NPRM must set forth the Commission's ''reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' [43] The Commission articulated its reasons to believe bait-and-switch pricing practices are prevalent in section III of the NPRM, particularly section III.C, which discusses the comments received in response to the ANPR, the Commission's history of enforcement actions, and other complementary work that demonstrate the prevalence of these practices. Second, the Commission must include ''a statement as to the prevalence of the acts or practices treated by the rule'' [44] in the statement of basis and purpose to accompany any final rule. Ultimately, the Commission's prevalence findings need only have ''some basis or evidence'' to show ''the practice the FTC rule seeks to regulate does indeed occur.'' [45]

Third, two commenters raised issues regarding the proposed rule's interaction with other rules, regulations, or statutes.[46] In the NPRM, the Commission solicited input ''to determine if compliance with the proposed rule along with the specific disclosure provisions for certain types of sectors or transactions would be impossible, overly burdensome, or beneficial.'' [47] The Bankers Associations in particular provided detailed views regarding the interplay between the requirements of the proposed rule and a number of rules and regulations that contain pricing disclosure requirements applicable to certain consumer financial services products. The Commission appreciates the views of the Bankers Associations regarding these important questions and will give them careful consideration. However, determining the appropriate scope of the proposed rule and its interaction with other legal

[35] *Ass'n of Nat'l Advertisers,* 627 F.2d at 1161–62.

[36] *See, e.g.,* H.R. Rep. No. 93–1107, 93d Cong., 2d Sess., reprinted in 1974 U.S.C.C.A.N. 7702, 7728; *Ass'n of Nat'l Advertisers,* 627 F.2d at 1163 (quoting H.R. Rep. No. 93–1606, at 33 (1974) (Conf. Report)).

[37] As explained in the legislative history:

The words 'disputed issues of material fact' are intended to describe and limit the scope of cross-examination in a rulemaking proceeding. Thus, the right of participants in the proceeding to cross-examine Commission witnesses does not include cross-examination on issues as to which there is not a bona fide dispute. In this connection, the Committee considers the rules of summary judgment applied by the courts analogous. Where the weight of the evidence is such that there can be no bona fide dispute over the facts, summary judgment is proper. Similarly, in such a situation cross-examination would not be permitted; neither is a participant entitled to cross-examination where the disputed issues do not involve material facts. This language in the bill is used to distinguish facts which might be relevant to the proceeding but not of significant enough import to rise to the level of materiality. The word material is used here with the same meaning it is given under the common law rules of evidence. Also of importance is the word 'fact.' Cross-examination is not required regarding issues in rulemaking proceedings which are not issues of fact. Examples of such issues are matters of law or policy or matters whose determination has been primarily vested by Congress in the Federal Trade Commission. Thus, unless the subject matter with regard as to which cross-examination is sought relates to disputed issues, which are material to the proposed rule and which are fact issues, there is no right to cross-examination on the part of any party to the proceeding.

H.R. Rep. No. 93–1107, 93d Cong., 2d Sess., *reprinted in* 1974 U.S.C.C.A.N. 7702, 7728.

[38] *Id.; see also Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) (explaining the standard as ''[o]nly disputes over facts that might affect the outcome''); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574, 586 (1986).

[39] *See* Chamber, Cmt. on NPRM at 20 (recommending a hearing with evidentiary procedures on ''consumer expectations about fees or charges consumers expect to be included with the purchase of a product or service'' and ''the impact of extensive fee disclosures early in the purchasing process on consumer's [sic] understanding of fees most likely to generate additional costs post-purchase or most relevant to the consumer's purchasing decision''); Gibson Dunn, Cmt. on NPRM at 10 (disputing ''(1) whether the practices are 'deceptive' or 'unfair' '').

[40] NPRM, 88 FR at 77432 nn.146–47 (citing long-held FTC positions that misleading door openers are deceptive and caselaw recognizing that it is a violation of the FTC Act if a consumer's first contact is induced through deception, even if the truth is clarified prior to purchase). The Commission also cited evidence demonstrating harm from unfair and deceptive fee practices, specifically the practice of advertising only part of a product's price upfront and revealing additional charges later as consumers go through the buying process (drip pricing) and the practice of dividing the price into multiple components without disclosing the total (partitioned pricing). *See, e.g., id.* at n.153.

[41] The comments received in response to the ANPR, in addition to the Commission's history of enforcement actions, demonstrated that advertising misrepresentation and unlawful practices related to pricing and added fees are a chronic problem confronting consumers.

[42] ACA Connects, Cmt. on NPRM at 15 (''Do CSPs engage in a widespread pattern of deceiving consumers through deceptive or misleading fee disclosures?''); Gibson Dunn, Cmt. on NPRM at 10 (disputing ''(2) whether such unfair or deceptive practices are 'prevalent' '').

[43] 15 U.S.C. 57a(b)(3).

[44] 15 U.S.C. 57a(d)(1)(A).

[45] *Pa. Funeral Dirs.* v. *FTC,* 41 F.3d 81, 87 (3d Cir. 1994). ACA Connects appears to suggest that the Commission must make a determination that a practice is widespread in every individual industry and market in order to support a finding of prevalence. It offers no support for this assertion, which runs contrary to precedent finding that ''even where there is a limited record as to the prevalence of a practice on a nationwide basis or where the data reviewed only relates to a few states, the practice can be found to be prevalent enough to warrant a regulation.'' *Id.* Furthermore, the NPRM described numerous comments in response to the ANPR and enforcement actions involving these practices in various industries, including the telecommunications industry. ACA Connects failed to provide any evidence to demonstrate a *bona fide* dispute as to this question.

[46] ACA Connects, Cmt. on NPRM at 15 (''Will consumers be confused by duplicative and/or conflicting disclosure requirements?''); Bankers Associations, Cmt. on NPRM at 8 (describing issues ''concerning the relationship between the disclosures required by the Proposed Rule and the disclosures required under other federal consumer financial law.'').

[47] NPRM, 88 FR at 77480, Section IX.

obligations is a quintessential question of legal interpretation and policy and is not determined by the resolution of an issue of specific fact. The comment from ACA framed the issue as whether consumers would be confused by duplicative or conflicting disclosure requirements. Here again, whether the disclosure requirements are duplicative or conflicting is a legal question and the question of whether consumers might be confused by multiple disclosure falls more neatly into the category of a legislative fact—''combining empirical observation with application of administrative expertise to reach generalized conclusions''—than a specific fact. The Commission appreciates the views and commentary ACA provided on this topic and will give them careful consideration, but is not persuaded that they present disputed issues of material fact.

Fourth, several commenters challenged the adequacy of the Commission's cost-benefit analysis, including the impact of the proposed rule on consumer understanding and competition, and assumptions underlying the Commission's analysis. Section VII of the NPRM contains the Commission's Preliminary Regulatory Analysis, required under 15 U.S.C. 57b–3(a), setting forth the Commission's preliminary analysis of the projected benefits and any adverse economic effects (or other effects) for the proposed rule. The Preliminary Regulatory Analysis is supported by substantial evidence, that is, it contains ''such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'' [48] The NPRM quantified costs and benefits where it could, and, where costs and benefits could not be quantified, the Commission identified assumptions made to reach its conclusions. If an assumption was needed, the NPRM made clear which quantities were being assumed. The Commission's preliminary analysis concluded that there are positive benefits to the proposed rule if the benefit per consumer is at least $6.65 per year over a 10-year period. For both quantified benefits and costs, the Commission provided a range representing the set of assumptions that resulted in a ''low-end'' or ''high-end'' estimate and the $6.65 benefit threshold assumes the high-end estimate of costs. Ultimately, the Commission's analysis calculated low-end and high-end estimates of the total quantified economy-wide costs and the necessary ''break-even benefit'' per consumer.

Several commenters asserted that the Commission failed to consider potential costs to consumers, suggesting that the proposed rule may result in consumer confusion and difficulty comparing prices. ACA Connects argued that the proposed rule ''would increase consumer search times if CSPs'' opt to ''present consumers with multiple pricing formats'' or ''forgo providing up-front pricing information'' to comply with the proposed rule. NCTA similarly raised concerns that the Proposed Rule could result in businesses omitting pricing information from advertising, thereby ''undermining the rule's stated goal of reducing consumers' search time.'' The Chamber argued that there is a disputed issue of material fact concerning the benefits to consumers of the proposed rule's 'Total Price' requirement, as compared to itemized disclosures or variable or dynamic pricing models. The Chamber further suggested that the proposed rule may negatively impact consumers because it will result in consumer confusion and will impact consumer access to ''cost-saving discounts and rebates.'' [49] Gibson Dunn contended generally that there is a disputed issue of material fact concerning ''the extent to which the Proposed Rule's substantial costs outweigh the relatively marginal benefits, given disputes over what costs the Rule would impose, what benefits it would present, and how those costs and benefits would be reflected in various industries.''

Commenters also questioned the Proposed Rule's impact on competition. Both ACA Connects and the Chamber argued that a disputed issue of material fact exists as to the impact of the Proposed Rule on competition in the marketplace. ACA Connects asserted that if adopted, the Proposed Rule ''may undermine competition among CSPs by giving an unfair competitive advantage to larger firms that can afford to expend the financial resources to take on the legal risk of continuing to advertise pricing to consumers.'' The Chamber, for its part, suggested that ''partitioned and drip pricing may have pro-competitive and pro-consumer justifications'' that the Commission did not consider in its cost-benefit analysis.

These questions about the Commission's cost-benefit analysis do not constitute disputed issues of material fact. As noted above, the legislative history strongly suggests the term ''disputed issues of material fact'' should be interpreted narrowly and given the same meaning as in summary judgment.[50] Further, a challenging party must demonstrate that there is a *bona fide* dispute that will affect the outcome of the rulemaking proceeding.[51] None of the commenters provided competing empirical evidence or data to challenge the Commission's analysis, and instead offered unsupported statements, predictions about how businesses might respond to the proposed rule, or general requests for further analysis.[52] Summarily disagreeing with the Commission's analysis does not create a material or disputed issue of fact.

The Commission reaches the same conclusion with respect to NCTA's challenge to the NPRM's assumption that 90% of firms (excepting live-event ticketing, short-term lodging, and the restaurant industry) already comply with the proposed rule. The NCTA argues that the 90% assumption is ''inaccurate with respect to the communications industry and, in turn, likely invalid for the economy as a whole.'' As with other contentions about the Commission's cost-benefit analysis, NCTA does not provide any empirical evidence or data challenging the Commission's assumption.[53]

[48] *Pa. Funeral Dirs. Ass'n* v. *FTC,* 41 F.3d at 85.

[49] As the Commission indicated in the NPRM, under the proposed rule, businesses would be free to apply discounts and rebates after disclosing Total Price. NPRM, 88 FR at 77439, Section V.A. To the extent that the Chamber is seeking further clarification on the Commission's understanding of Total Price for consumers that have provided loyalty or discount membership information, the Commission appreciates this comment and will give it careful consideration.

[50] *See Ass'n of Nat'l Advertisers, Inc.* v. *FTC,* 627 F.2d 1151, 1164 (D.C. Cir. 1979); Kurt Walters, *Reassessing the Mythology of Magnuson-Moss: A Call to Revive Section 18 Rulemaking at the FTC,* 16 Harv. L. & Pol'y Rev. 519, 544 (2022).

[51] *See Ass'n of Nat'l Advertisers,* 627 F.2d at 1162.

[52] Gibson Dunn attempts to recreate the Commission's break-even analysis by modifying the rate firms will pay data scientists and attorneys to come into compliance with the proposed rule; but Gibson Dunn offers no contrary evidence to challenge the Commission's assumptions, other than to say that they are incorrect. Instead, Gibson Dunn's comment offers a critique of the Commission's economic analysis, challenging many of the Commission's estimates as unlikely and contending that the calculations estimating benefits are too high and the calculations estimating costs too low. The Commission is reviewing this analysis carefully.

[53] The NPRM contains a break-even analysis, which estimates the break-even point considering both a 90% existing compliance rate with the Proposed Rule *and* a 50% existing compliance rate with the Proposed Rule. The break-even analysis in the NPRM is specific and explains the Commission's reasoning. Additionally, while the Commission is not required to comply with OMB Circular A–4, the NPRM's break-even analysis is consistent with OMB guidance. Such break-even analyses are accepted practice by OMB, particularly where ''non-monetized benefits and costs are likely to be important.'' OMB Circular A–4 at 47–48. (Nov. 9, 2023). Moreover, the assumptions underlying the break-even analysis are precisely the kind of legislative facts ''involving expert opinions and forecasts, which cannot be decisively resolved by testimony.'' *Ass'n of Nat'l Advertisers,* 627 F.2d at

the Commission makes plain that this assumption is not necessarily material to its break-even analysis as any increase to this number has effects on estimated costs *and* benefits that largely cancel each other out.[54] If the 90% assumption is an overestimate, costs go up, but so do benefits; if the assumption is an underestimate, costs and benefits both go down. Thus, NCTA has failed to demonstrate that the 90% assumption is a disputed issue of specific fact or an issue that is material for the Commission to resolve.

Finally, NCTA identifies as a disputed issue of material fact whether ''reasonable consumers expect the 'total price' 'exclusive of government charges' to exclude only government charges imposed directly on consumers?'' [55] NCTA posits that the ''NPRM makes inherent assumptions about the fees or government charges a reasonable consumer would expect to be included or excluded in the Total Price for a good or service.'' Record evidence supporting the NPRM demonstrates consumers believe all mandatory charges should be reflected in the total price, in many instances specifically *including* taxes.[56] Nevertheless, the Commission's basis for its proposed Government Charges definition was to ensure that all mandatory charges are reflected in the Total Price, including ''amounts that the government imposes on a business and that the business chooses to pass on to consumers,'' to prevent a business from ''artificially inflating taxes that are excluded from the Total Price.'' The proposed rule does not prohibit itemization and businesses are free to itemize all government charges or other fees that the Total Price comprises. NCTA also gives the view that other regulatory pricing requirements have made different determinations regarding government charges. The Commission appreciates NCTA's comparisons and will consider them in its continued analysis of how the proposed rule interacts with other rules and regulations. Again, however, these are questions of law and legislative fact, not specific facts.

Thus, the Commission finds that there are no ''disputed issues of material fact'' to resolve at the hearing [57] and no need for cross-examination or rebuttal submissions.[58]

This initial notice of informal hearing also serves as the ''final notice of informal hearing.'' [59] A final notice of informal hearing is limited in its substance to matters that arise only when the Commission designates disputed issues of material fact: who will conduct cross-examination; whether any interested persons with similar interests will be grouped together for such purposes; and who will make rebuttal submissions.[60] Because cross-examination and submission of rebuttal evidence are not anticipated to occur in this informal hearing, no separate final notice of informal hearing is necessary.

IV. List of Hearing Participants; Making an Oral Statement; Requests for Documentary Submissions

Pursuant to Commission Rule 1.12(a)(4), 16 CFR 1.12(a)(4), the following is the list of interested persons (''Hearing Participants'') who will have the opportunity to make oral presentations at the informal hearing:

1. ACA Connects—America's Communication Association
2. American Bankers Association and Consumer Bankers Association
3. U.S. Chamber of Commerce
4. NCTA—The Internet & Television Association
5. International Franchise Association
6. BattleLine LLC
7. IHRSA, the Global Health and Fitness Association
8. National Taxpayers Union Foundation
9. The coalition of 52 national and state consumer advocacy groups represented by the Consumer Federation of America
10. National Consumer Law Center (''NCLC'') on behalf of its low-income clients
11. National Association of Consumer Advocates
12. The coalition of 33 health and consumer protection advocacy groups represented by Community Catalyst
13. The coalition of 39 housing justice advocacy organizations represented by the National Housing Law Project
14. Prison Policy Initiative, and Stephen Raher
15. Formerly Incarcerated, Convicted People and Families Movement
16. Truth in Advertising, Inc.
17. Fair Price, Fair Wage Coalition

Oral statements will be limited to 15 minutes, although they may be supplemented by documentary submissions as described below, and the presiding officer may grant an extension of time for good cause shown. Transcripts of the oral statements will be placed in the rulemaking record. Hearing Participants will be provided with instructions as to how to participate in the virtual hearing.

If you are a Hearing Participant and would like to submit your oral presentation in writing or file a supplementary documentary submission, please write ''Unfair or Deceptive Fees Rule (16 CFR part 464) (R207011)'' on your submission and send it electronically to *electronicfilings@ftc.gov,* with a copy to *OALJ@ftc.gov.* If you prefer to file your submission on paper, mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex J), Washington, DC 20580. If possible, please send your paper submission to the Commission by overnight service.

If you file a documentary submission under this section, your submission—including your name and your state—will be placed on the public record of this proceeding, including on the website *https://www.ftc.gov.* Because your documentary submission will be placed on the public record, you are solely responsible for making sure that it does not include any sensitive or confidential information. In particular, your submission should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your documentary submission does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your documentary submission should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices,

1162 n.22 (''Because legislative facts combine empirical observation with application of administrative expertise to reach generalized conclusions, they need not be developed through evidentiary hearings.'').

[54] NPRM, 88 FR at 77452, Section VII.C.2.f.(2) Break-Even Analysis of Economy-Wide Costs and Benefits.

[55] NCTA, Cmt. on NPRM at 32.

[56] NPRM, 88 FR at 77430–31 n.124.

[57] If any interested person seeks to have additional disputed issues of material fact designated, the person may make such request to the presiding officer pursuant to 16 CFR 1.13(b)(1)(ii).

[58] 16 CFR 1.12(b).

[59] 16 CFR 1.12(c).

[60] *Id.*

manufacturing processes, or customer names.

Documentary submissions containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the submission must include the factual and legal basis for the confidentiality request and must identify the specific portions to be withheld from the public record. *See* Commission Rule 4.9(c). Your documentary submission will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your documentary submission has been posted publicly at *https://www.ftc.gov*—as legally required by Commission Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove it, unless you submit a confidentiality request that meets the requirements for such treatment under Commission Rule 4.9(c), 16 CFR 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of submissions to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive documentary submissions it receives from the Hearing Participants on or before April 10, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Hearing Participants who need assistance should indicate as much in their submissions, and the Commission will endeavor to provide accommodations. Hearing Participants without the computer technology necessary to participate in video conferencing will be able to participate in the informal hearing by telephone; they should indicate as much in their submissions.

V. Conduct of the Informal Hearing; Role of Presiding Officer

The Commission's Chief Presiding Officer, the Chair, has appointed and designates Administrative Law Judge for the Federal Trade Commission, the Honorable Jay L. Himes, to serve as the presiding officer of the informal hearing. Judge Himes will conduct the informal hearing virtually using video conferencing starting at 10 a.m. Eastern on April 24, 2024. The informal hearing will be available for the public to watch live from the Commission's website, *https://www.ftc.gov,* and a recording or transcript of the informal hearing will be placed in the rulemaking record.

Because there are no ''disputed issues of material fact'' to resolve at the informal hearing, the presiding officer is not anticipated to make a recommended decision.[61] The role of the presiding officer shall include presiding over and ensuring the orderly conduct of the informal hearing, including selecting the sequence in which oral statements will be heard, placing the transcript and any additional written submissions received into the rulemaking record. The presiding officer may prescribe additional procedures or issue rulings in accordance with Commission Rule 1.13, 16 CFR 1.13. In execution of the presiding officer's obligations and responsibilities under the Commission Rules, the presiding officer may issue additional public notices.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the participation deadline. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[62]

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2024–06468 Filed 3–26–24; 8:45 am]

BILLING CODE 6750–01–P

[61] *See* 16 CFR 1.13(d) (''The presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.'').

[62] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0381; EPA–R03–OAR–2023–0380; FRL–9822–01–R3]

Air Plan Approval; West Virginia; 2006 24-Hour Fine Particulate Matter Limited Maintenance Plans for the Charleston Area and the West Virginia Portion of the Steubenville-Weirton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), two limited maintenance plans (LMPs) submitted by the West Virginia Department of Environmental Protection (WVDEP), on behalf of the State of West Virginia. The LMPs are revisions to West Virginia's state implementation plan (SIP) and address the Charleston, West Virginia area (Charleston Area) and the West Virginia portion of the Steubenville-Weirton, Ohio-West Virginia area (West Virginia portion of the Steubenville-Weirton Area). EPA is proposing to approve the Charleston Area LMP and the West Virginia portion of the Steubenville-Weirton Area LMP because they provide for the maintenance of the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) through the end of the second 10-year maintenance periods. In addition, EPA is initiating the process to find the LMPs adequate for transportation conformity purposes.

DATES: Written comments must be received on or before April 26, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0381 (Charleston Area) or EPA–R03–OAR–2023–0380 (West Virginia portion of the Steubenville-Weirton Area) at *www.regulations.gov,* or via email to *goold.megan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 29, 2022, WVDEP submitted to EPA two revisions to the State's SIP. Both revisions are second 10-year maintenance LMPs for the 2006 24-hour $PM_{2.5}$ NAAQS; one revision focuses on the Charleston Area and the other on the West Virginia portion of the Steubenville-Weirton Area. The Charleston Area includes Kanawha County and Putnam County in West Virginia. The Steubenville-Weirton (Ohio-West Virginia) Area is comprised of Brooke County and Hancock County in West Virginia and Jefferson County in Ohio. *See* 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia). This action is expected to ensure that the State of West Virginia meets CAA requirements. There is no information on the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

Table of Contents

I. Background

A. The $PM_{2.5}$ NAAQS

Under section 109 of the CAA, EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. EPA sets the NAAQS for criteria pollutants at levels required to protect public health and welfare.[1] EPA's particulate matter standards address particles with diameters that are generally two and half micrometers or smaller (fine particulate matter or $PM_{2.5}$) and particles with diameters that are generally 10 micrometers or smaller (PM_{10}). $PM_{2.5}$ is one of the ambient pollutants for which EPA has established health-based standards.

Fine particulate matter contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children. *See* 78 FR 3086 at 3088 (January 15, 2013). $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (primary $PM_{2.5}$ or direct $PM_{2.5}$) or can be formed in the atmosphere (secondary $PM_{2.5}$) as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOCs), and ammonia (NH_3).[2]

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for $PM_{2.5}$. The Agency established primary and secondary annual and 24-hour standards for $PM_{2.5}$. The annual standard was set at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour (daily) standard was set at 65 $\mu g/m^3$ based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area.[3]

On October 17, 2006 (71 FR 61144), EPA retained the annual average NAAQS at 15.0 $\mu g/m^3$ but lowered the level of the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[4]

On December 14, 2012, EPA promulgated the 2012 $PM_{2.5}$ NAAQS, including lowering the annual standard to 12.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations. EPA maintained the 24-hour standard of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 78 FR 3086 (January 15, 2013).

B. Designation of $PM_{2.5}$ NAAQS Nonattainment Areas and Subsequent Actions

Following promulgation of a new or revised NAAQS, EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009 (74 FR 58688), EPA designated both the Charleston (West Virginia) Area and the Steubenville-Weirton (Ohio-West Virginia) Area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 74 FR 58775 (November 13, 2009) and 40 CFR 81.349 (Charleston, West Virginia) and, also see 40 CFR 81.336 (Steubenville-Weirton, Ohio) and 40 CFR 81.349 (Steubenville-Weirton, West Virginia).[5]

On November 18, 2011 (76 FR 714503), EPA determined under the Agency's Clean Data Policy[6] that the Charleston nonattainment area had clean data for the 2006 24-hour $PM_{2.5}$ NAAQS based upon quality-assured and certified ambient air monitoring data. The Agency made a similar clean data determination regarding the 2006 24-hour $PM_{2.5}$ NAAQS for the entire Steubenville-Weirton area on May 14, 2012 (77 FR 28264). Based on these clean data determinations, the requirements for the Charleston Area and Steubenville-Weirton Area to submit attainment demonstrations and

[1] For a given air pollutant, ''primary'' national ambient air quality standards are those determined by EPA as requisite to protect the public health. ''Secondary'' standards are those determined by EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

[2] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[3] The primary and secondary standards were set at the same level for both the 24-hour and the annual $PM_{2.5}$ standards.

[4] Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 35 $\mu g/m^3$ at all relevant monitoring sites in the subject area, averaged over a 3-year period.

[5] On January 15, 2015 (80 FR 2206), EPA designated counties in these areas as ''unclassifiable/attainment'' for the 2012 primary annual $PM_{2.5}$ NAAQS.

[6] *See e.g.,* 70 FR 71612 (November 29, 2005) and 72 FR 20586 (April 25, 2007).

associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and other SIP requirements related to the attainment of the 2006 24-hour $PM_{2.5}$ NAAQS were suspended as long as the areas continued to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

On December 6, 2012, the State of West Virginia submitted to EPA a redesignation request and maintenance plan for the Charleston Area. EPA redesignated the Charleston Area from nonattainment to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS and approved the maintenance plan for the first 10-year maintenance period on March 31, 2014 (79 FR 17884).[7] The first 10-year maintenance period for the Charleston Area will end on April 30, 2024, and the Area's second 10-year maintenance plan, which is subject of this proposed rulemaking, extends through April 30, 2034.

On June 8, 2012, the State of West Virginia submitted to EPA a redesignation request and maintenance plan for the West Virginia portion of the Steubenville-Weirton Area from nonattainment to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. On March 18, 2014 (79 FR 15019), EPA redesignated to attainment the West Virginia portion of the 2006 24-hour Steubenville-Weirton Area and approved the maintenance plan for the first 10-year maintenance period.[8] The first 10-year maintenance period for the West Virginia portion of the Steubenville-Weirton Area will end on April 17, 2024, and the Area's second 10-year maintenance plan, which is the subject of this proposed rulemaking, extends through April 17, 2034.

C. Limited Maintenance Plans

Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. One of the criteria for redesignation is to have an approved maintenance plan under section 175A of the Act. Section 175A requires that nonattainment areas seeking redesignation to attainment submit ''a revision of the applicable state implementation plan to provide for the maintenance of the [NAAQS] for such air pollutant in the area concerned for at least 10 years after the redesignation.'' [9] On September 4, 1992, EPA issued guidance on the content of a maintenance plan (Memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (hereinafter referred to as the ''Calcagni Memorandum'')) [10] which explained that states may meet this requirement to ''provide for the maintenance of the NAAQS'' by using projected emissions inventories or air quality modeling showing continued maintenance until the end of the relevant maintenance period.[11] EPA clarified in subsequent guidance memoranda that certain areas could meet the CAA section 175A requirement to provide for maintenance by demonstrating that the area's design value was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future.[12]

Most recently, in October 2022, EPA released guidance extending this streamlined option for demonstrating maintenance under CAA section 175A to certain $PM_{2.5}$ areas, titled ''Guidance on Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas'' ($PM_{2.5}$ LMP Guidance).[13]

EPA refers to this streamlined demonstration of maintenance as a limited maintenance plan or LMP. EPA has interpreted CAA section 175A as permitting this option because section 175A does not define how areas may demonstrate maintenance, and in EPA's experience with implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs, have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the $PM_{2.5}$ LMP Guidance, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni Memorandum, including an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS.

The $PM_{2.5}$ LMP Guidance describes a process for states to demonstrate that an area qualifies for an LMP by showing that, based on recent measured air quality, the area is unlikely to violate the NAAQS in the future. The $PM_{2.5}$ LMP Guidance relies on the critical design value (CDV) concept. This guidance describes a process for a $PM_{2.5}$ area to qualify for an LMP by showing that the area's average design value (ADV) for each site in the area (based upon the most recent five years of monitoring data) [14] is at or below the CDV. The CDV is an indicator of the likelihood of future violations of the NAAQS in an area given the area's current ADV and its historical variability. The $PM_{2.5}$ LMP Guidance provides a means for calculating the CDV for an area (or monitoring site). The CDV calculation for a monitoring site involves parameters including: (1) the level of the relevant NAAQS; [15] (2) the coefficient of variation of recent design values measured at that site; and (3) a statistical parameter corresponding to a 10 percent probability of exceedance, such that sites with historically high variability in design values result in a lower (or more stringent) CDV. The CDV is the highest average design value an area could have before it may experience a future exceedance of the NAAQS with a certain probability—in the case of the $PM_{2.5}$ LMP Guidance, a probability of one in ten.[16] Therefore, if an area's current ADV is less than the area's CDV, that area has less than ten percent probability of exceeding the NAAQS in the future.

Per EPA's transportation conformity regulations, areas with LMPs must also ''demonstrate that it would be unreasonable to expect that such an area

[7] Effective on April 30, 2014.

[8] Effective on April 17, 2014.

[9] Eight years into the first maintenance period, the applicable state or local agency must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period.

[10] The Calcagni Memorandum can be found at *www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

[11] See Calcagni Memorandum at 9–11.

[12] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001 (hereinafter referred to as the ''Wegman Memorandum''). Copies of these guidance memoranda can be found in the dockets for this proposed rulemaking.

[13] The guidance document titled ''Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas'' can be found at *www.epa.gov/system/files/documents/2023-03/PM%202.5%20Limited%20Maintenance%20Plan%20Guidance.pdf.*

[14] EPA recommends that the ADV be calculated using at least five years of design values, each representing a three-year period, because this approach would rely on a more robust dataset. However, we acknowledge that an alternative interpretation may be acceptable, where these variables could be calculated using three years of design values, collectively representing five years of air quality data.

[15] As noted in Attachment A of the Wegman Memorandum, the CDV calculation was designed to apply for any NAAQS pollutant and is not specific to PM_{10}.

[16] The $PM_{2.5}$ Guidance directs states to calculate a site-specific CDV for the monitoring site in an area with the highest design value, and also for all other active monitoring sites in the area with complete data.

would experience enough motor vehicle emissions growth for a violation of the NAAQS to occur.'' [17]

II. Review of SIP Submissions

On March 29, 2022, EPA received two second 10-year maintenance plan SIP submissions for the 2006 24-hour $PM_{2.5}$ NAAQS from West Virginia. One SIP revision was for the Charleston Area and the other was for the West Virginia portion of the Steubenville-Weirton Area.

A. Qualifying for the Limited Maintenance Plan Option

For both its Charleston Area LMP and the West Virginia portion of the Steubenville-Weirton Area LMP, West Virginia calculated a 5-year weighted design value using the five most recent years of certified data available to the State at the time (2016–2020).[18] For comparison to the 5-year weighted design value, West Virginia used a threshold equal to 85 percent of the 2006 24-hour $PM_{2.5}$ NAAQS, or 30.17 $\mu g/m^3$.[19]

After West Virginia submitted its LMP SIP submissions to EPA, the Agency subsequently provided the updated $PM_{2.5}$ LMP Guidance for $PM_{2.5}$ NAAQS areas planning to submit limited maintenance plans. As discussed in section I.C. of this document, one way for an area to qualify for an LMP is to show that the area's ADV (based upon the most recent five years of monitoring data) is at or below the CDV. Therefore, given the timing of the State's submission and the timing of the issuance of EPA's updated guidance, EPA is in this case employing this methodology outlined in its updated guidance to demonstrate that both the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area are eligible for an LMP and that the plans therefore provide for maintenance of the NAAQS, even though those calculations were not included as part of the State's submissions.

To calculate the ADV for each area, EPA averaged the most recent five consecutive design values for the 2006 24-hour $PM_{2.5}$ standard, selecting the highest design value from all active monitoring sites from the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area. The Charleston Area includes two ambient air monitoring sites for the 24-hour $PM_{2.5}$ NAAQS: the Charleston NCore site (AQS 54–039–0020) and the South Charleston site (AQS 54–039–1005). In the West Virginia portion of the Steubenville-Weirton Area, the 24-hour $PM_{2.5}$ NAAQS is monitored at three ambient air monitoring sites within Brooke and Hancock counties: the Follansbee site (AQS 54–009–0005), the Weirton-Marland Heights site (AQS 54–009–0011), and the Weirton Summit Circle site (AQS 54–029–0009).

Since each design value is calculated by averaging three years of valid daily means, the average of the last five 3-year design values includes data from the most recent seven years (2016–2022). Table 1 in this document presents the most recent (2018–2022) 3-year design values for the 24-hour $PM_{2.5}$ NAAQS for the Charleston Area, with an ADV of 15.6 $\mu g/m^3$.[20] Table 2 in this document shows the 24-hour $PM_{2.5}$ NAAQS design values for 2018–2022 for the West Virginia portion of the Steubenville-Weirton Area and presents an ADV of 19.6 $\mu g/m^3$.

TABLE 1—CHARLESTON AREA 24-HOUR $PM_{2.5}$ NAAQS DESIGN VALUES

[$\mu g/m^3$] [a]

Monitor	2018 Design value (2016–2018)	2019 Design value (2017–2019)	2020 Design value (2018–2020)	2021 Design value (2019–2021)	2022 Design value (2020–2022)	Average of most recent 3-year design values
Charleston NCore	16	15	15	16	16	15.6
South Charleston	16	15	14	15	15	15

[a] Data provided by EPA's Air Quality System (AQS).

TABLE 2—WEST VIRGINIA PORTION OF THE STEUBENVILLE-WEIRTON AREA 24-HOUR $PM_{2.5}$ NAAQS DESIGN VALUES

[$\mu g/m^3$] [a]

Monitor	2018 Design value (2016–2018)	2019 Design value (2017–2019)	2020 Design value (2018–2020)	2021 Design value (2019–2021)	2022 Design value (2020–2022)	Average of most recent 3-year design values
Follansbee	19	19	18	19	19	18.8
Weirton-Marland Heights	21	20	19	20	18	19.6
Weirton-Summit Circle	19	19	18	19	18	18.6

[a] Data provided by EPA's Air Quality System (AQS).

To calculate the CDV for each area, we used the recent five years of design values and their variability with the equation presented in the $PM_{2.5}$ LMP guidance. Table 3 in this document shows the input and results of the LMP eligibility calculations. The resulting site-specific CDV for the Charleston Area is calculated to be 33.2 $\mu g/m^3$. Therefore, the Charleston Area's ADV (15.6 $\mu g/m^3$) falls below the site-specific CDV of 33.2 $\mu g/m^3$ and thus meets the

[17] See 40 CFR 93.109(e).

[18] At the time West Virginia was preparing its SIP submittals, EPA had yet to provide the LMP guidance for the $PM_{2.5}$ NAAQS which clarified the Agency's interpretation of how to calculate a 5-year ADV. West Virginia's 5-year weighted design value includes the 3-year design values for 2016–2018, 2017–2019, and 2018–2020. The State refers to this as a ''weighted'' 5-year average design value since data from years 2017 and 2018 are given more weight (*i.e.* are included more often).

[19] Using 85 percent of the NAAQS is a threshold taken from earlier LMP guidance documents that were specific to other NAAQS. See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; and ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995.

[20] An area's ADV is determined by the monitor with the highest average of the five most recent 3-year design values.

first criterion for LMP eligibility.[21] The resulting site-specific CDV for the West Virginia portion of the Steubenville-Weirton Area is calculated to be 32.1 µg/m^3. The West Virginia portion of the Steubenville-Weirton Area ADV (19.6 µg/m^3) falls below the site-specific CDV of 32.1 µg/m^3 and thus meets the first criterion for LMP eligibility.[22]

TABLE 3—LMP ELIGIBILITY CALCULATION EQUATIONS AND INPUT

2006 24-hour $PM_{2.5}$ NAAQS	35 µg/m^3.
Critical t-value (t_c)	1.533.
Charleston Area ADV	15.6 µg/m^3.
Steubenville-Weirton Area (West Virginia portion) ADV	19.6 µg/m^3.
Standard deviation of Charleston Area design values (2018–2022)	0.548 µg/m^3.
Standard deviation of West Virginia portion of the Steubenville-Weirton Area design values (2018–2022).	1.140 µg/m^3.
Coefficient of Variation (CV)	CV = (standard deviation of sample/ADV).
Charleston Area CV	0.035.
West Virginia portion of the Steubenville-Weirton Area CV	0.0582.
Critical Design Value (CDV)	CDV = NAAQS/(1 + ($t_c \times$ CV).
Charleston Area CDV	33.2 µg/m^3.
West Virginia portion of the Steubenville-Weirton Area CDV	32.1 µg/m^3.

The $PM_{2.5}$ LMP Guidance notes that an air agency submitting an LMP is not required to submit a future year emissions inventory, but it is still required to submit the other elements of a maintenance plan—an attainment year emissions inventory, provisions for continued operation of the monitoring network, verification of continued attainment, and a contingency plan. The maintenance demonstration is satisfied by the calculations Table 3 in this document above. As discussed in further sections of this document, EPA finds that West Virginia's LMPs for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area include all the necessary components, so we are proposing to approve these two second LMPs as a revision to the West Virginia SIP. The Ohio portion of the Steubenville-Weirton Area is not addressed in this proposed rulemaking.[23]

B. Attainment Emissions Inventories

As noted previously, states that qualify for an LMP must still meet the other elements of a maintenance plan, as articulated in the Calcagni Memo. This includes an attainment year emissions inventory. For the second 10-year maintenance plans for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area, West Virginia provided emissions inventories from the 2017 National Emissions Inventory (NEI), version 2, which was the most comprehensive emissions inventory year containing data that was quality assured by EPA at the time West Virginia was preparing the LMP SIP submissions.[24] The 2017 NEI was also representative of the 2016–2022 time period which served as the 5-year period used to demonstrate that the areas were eligible for an LMP.[25] Tables 4 and 5 in this document include the following five categories from the 2017 inventory for direct $PM_{2.5}$ and its precursors (SO_2, NO_X, VOCs, and NH_3): point sources, nonpoint (area) sources, on-road mobile sources, nonroad mobile sources, and fire events.[26]

TABLE 4—CHARLESTON AREA[a] 2017 ATTAINMENT YEAR EMISSIONS INVENTORY

[tpy][b]

Sector	$PM_{2.5}$[c]	SO_2	NO_X	VOC	NH_3
Point Sources	116	5,756	7,855	1,367	73
Nonpoint (Area) Sources	2,330	77	3,350	33,705	314
On-road Mobile Sources	100	18	3,010	1,605	88
Nonroad Mobile Sources	84	2	536	1,024	1
Event—Fire[d]	325	33	67	859	60

[a] Includes emissions from both Kanawha County and Putnam County.
[b] Taken from West Virginia's 2006 24-hour $PM_{2.5}$ LMP SIP submission for the Charleston Area.
[c] Total primary $PM_{2.5}$.
[d] Includes emissions from agricultural burning, prescribed fires, wildfires, and other types of fires.

TABLE 5—WEST VIRGINIA PORTION OF THE STEUBENVILLE-WEIRTON AREA[a] 2017 ATTAINMENT YEAR EMISSIONS INVENTORY

[tpy][b]

Sector	$PM_{2.5}$[c]	SO_2	NO_X	VOC	NH_3
Point Sources	144	345	808	369	10

[21] See ''CDV Calculations'' spreadsheet in the docket for this proposed rulemaking.

[22] Id.

[23] EPA finalized approval of the Ohio portion of the Steubenville-Weirton Area's second 10-year 2006 24-hour $PM_{2.5}$ LMP on January 22, 2024 (89 FR 3889).

[24] The redesignation request and first 10-year maintenance plan for both the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area included a 2008 emissions inventory.

[25] Each area's design value was calculated by averaging three years of valid daily means, the average of the last five 3-year design values includes data from the most recent seven years (2016–2022).

[26] A more detailed version of the inventory can be found in West Virginia's 2006 24-hour $PM_{2.5}$ LMP SIP submissions for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area, located in the respective dockets. See *www.regulations.gov,* Docket No. EPA–R03–OAR–2023–0381 (Charleston Area) or EPA–R03–OAR–2023–0380 (West Virginia portion of the Steubenville-Weirton Area).

TABLE 5—WEST VIRGINIA PORTION OF THE STEUBENVILLE-WEIRTON AREA [a] 2017 ATTAINMENT YEAR EMISSIONS INVENTORY—Continued

[tpy] [b]

Sector	$PM_{2.5}$ [c]	SO_2	NO_X	VOC	NH_3
Nonpoint (Area) Sources	402	19	551	4,921	72
On-road Mobile Sources	13	2	423	304	11
Nonroad Mobile Sources	7	0.25	107	105	0.19
Event—Fire [d]	33	3	6	90	6

[a] Includes emissions from both Brooke County and Hancock County.
[b] Taken from West Virginia's 2006 24-hour $PM_{2.5}$ LMP SIP submissions for the West Virginia portion of the Steubenville-Weirton Area.
[c] Total primary $PM_{2.5}$.
[d] Includes emissions from agricultural burning, prescribed fires, wildfires, and other types of fires.

The redesignation request and first 10-year maintenance plan for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area each included a 2008 emissions inventory. The emissions of direct $PM_{2.5}$ and its precursors in the Charleston Area have decreased substantially between the 2008 and 2017 inventory (60 percent).

C. Air Quality Monitoring Network

Once an area is redesignated, the applicable state or local agency must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area over the maintenance period. West Virginia operates, in accordance with the requirements of 40 CFR part 58, two $PM_{2.5}$ monitors within the Charleston Area and three $PM_{2.5}$ monitors within the West Virginia portion of the Steubenville-Weirton Area. On June 30, 2022, WVDEP submitted its' 2022 Annual Monitoring Network Plan, which EPA approved on December 14, 2022.[27] West Virginia's annual monitoring network plan and EPA's approval letter are included in the dockets associated with this action.

D. Verification of Continued Attainment

West Virginia, through WVDEP, has the legal authority to enforce and implement the requirements of the Charleston Area LMP and the West Virginia portion of the Steubenville-Weirton Area LMP. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

In demonstrating maintenance, continued attainment of the NAAQS can be verified through operation of an appropriate air quality monitoring network. The Calcagni Memorandum states that the maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification.[28] As discussed previously in the preamble of this document, $PM_{2.5}$ is currently monitored by WVDEP within the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area. In section V.2 of West Virginia's submitted maintenance plans, WVDEP committed to continue to conduct ambient $PM_{2.5}$ air quality monitoring in the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area throughout the term of the second 10-year maintenance period. West Virginia will do this to verify continued attainment with the 2006 24-hour $PM_{2.5}$ NAAQS, to identify when contingency provisions are triggered, and to protect any applicable Prevention of Significant Deterioration (PSD) increments.

E. Contingency Provisions

Section 175A(d) of the CAA requires that the maintenance plan contain contingency provisions to assure that the state will promptly correct any violation of the relevant $PM_{2.5}$ NAAQS that may occur after the redesignation of the area to attainment. Such provisions must include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned that were contained in the nonattainment SIP prior to redesignation. EPA's redesignation guidance notes that the state need not have fully adopted contingency measures that will take effect without further action by the state. As such, the contingency plan should ensure that the state has the capacity to adopt the contingency measures expediently if the need were triggered. Therefore, the primary elements of West Virginia's contingency plans involve tracking and triggering mechanisms to determine when contingency measures would be necessary and a process for implementing appropriate control measures.

In the Charleston Area LMP, WVDEP proposes to retain the existing contingency provisions and associated measures from the first 10-year maintenance plan approved by EPA on March 31, 2014 (79 FR 17884). WVDEP also proposes to retain the existing contingency plan and associated contingency measures from the State's portion of the Steubenville-Weirton Area's first 10-year maintenance plan approved by EPA on March 18, 2014 (79 FR 15019). West Virginia's two LMP SIP submissions outline the procedures for the adoption and implementation of contingency measures, which include a warning level response and an action level response, to further reduce emissions should a violation occur.

West Virginia's contingency measures for the Charleston Area and the Steubenville-Weirton Area include an initial warning level response that is triggered for the 2006 24-hour $PM_{2.5}$ NAAQS when the 98th percentile 24-hour $PM_{2.5}$ concentration for a single calendar year exceeds 35 $\mu g/m^3$. In the case of triggering a warning level, a study will be conducted to determine if the emissions trends show increasing concentrations of $PM_{2.5}$, and whether this trend, if any, is likely to continue. If it is determined through the study that action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an action level response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

An action level response will be prompted by either a two-year average

[27] EPA's letter approving WVDEP's 2022 AMNP included deferred approval of WVDEP's request to exclude continuous $PM_{2.5}$ sampler data from a monitor collated at the Charleston NCore site. EPA's decision regarding that sampler data does not impact the State's ability to monitor $PM_{2.5}$ in accordance with 40 CFR part 58 as there is another monitor at the site that has been used as the primary monitor.

[28] See Calcagni Memorandum at 11.

of the 98th percentile equaling 35 μg/m^3 or greater within the maintenance area or a violation of the standard within the area (*i.e.,* a three-year average of the 98th percentile of 35 μg/m^3 or greater). If an action level response is triggered, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

In both the Charleston Area maintenance plan and the Steubenville-Weirton Area maintenance plan, West Virginia commits to adopt and expeditiously implement the necessary contingency measures as corrective actions. West Virginia's potential contingency measures include the following: (1) diesel reduction emission strategies, (2) alternative fuels and diesel retrofit programs for fleet vehicle operations, (3) tighter $PM_{2.5}$, SO_2, and NO_X emissions offsets for new and modified major sources, (4) concrete manufacturing controls, and (5) additional NO_X reductions.

III. Transportation Conformity

Transportation conformity for the purposes of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. *See* CAA 176(c)(1)(A) and (B). While qualification for the LMP option does not exempt an area from the need to determine transportation conformity, in an area with an adequate or approved LMP, transportation conformity may be demonstrated without a regional emissions analysis for the relevant NAAQS and pollutant (40 CFR 93.109(e)). An LMP must demonstrate that it is unreasonable to expect that the qualifying areas would experience so much growth in motor vehicle emissions that a violation of the relevant NAAQS would occur (40 CFR 93.109(e)). Hence, because no such impact is expected, areas with LMPs are not required to do a regional emissions analysis as part of a transportation conformity determination. See 40 CFR 93.109(e). Therefore, an LMP does not include a motor vehicle emissions budget.

In the first 10-year maintenance plans for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area, which have been approved into the West Virginia SIP, the State demonstrated that regional highway emissions of $PM_{2.5}$ and precursor NO_X emissions were insignificant contributors to the nonattainment of the areas.[29] Therefore, as per 40 CFR 93.109(f), the first 10-year maintenance plans for these areas did not include motor vehicle emissions budgets and the metropolitan planning organizations for the areas were not required to satisfy a regional emissions analysis as part of transportation conformity determinations for direct $PM_{2.5}$ or any $PM_{2.5}$ precursor.

WVDEP has now submitted LMPs for the second 10-year maintenance period for these $PM_{2.5}$ maintenance areas. As mentioned previously, EPA clarified in the 2022 $PM_{2.5}$ LMP Guidance, which was released after West Virginia submitted its SIP revisions, that an area submitting the second 10-year maintenance plan may be eligible for the LMP option as long as monitored air quality data and VMT trends support the LMP option. Consequently, if EPA approves the LMPs for these areas or finds them to be adequate, the metropolitan planning organizations for the Charleston Area and for the West Virginia portion of the Steubenville-Weirton Area will not be required to perform regional emissions analyses for direct $PM_{2.5}$ emissions or any $PM_{2.5}$ precursor when they determine conformity for these areas.

To determine if motor vehicle emissions growth in the remaining maintenance period will not reasonably be expected to cause a violation of the NAAQS, EPA analyzed air quality and VMT trends. As shown in Table 1 and Table 2 of this document, design values for both the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area have remained well below the NAAQS since 2016. Additionally, vehicle emissions of NH_3, NO_X, $PM_{2.5}$, SO_2, and VOCs have steadily decreased in both the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area between 2002 and 2020. See Tables 6 and 7, and the trends analysis in the docket for this action.

TABLE 6—CHARLESTON AREA ONROAD MOBILE SOURCE EMISSIONS

[tpy]

	2002	2005	2008	2011	2014	2017	2020
NH_3	314	318	146	111	106	88	73
NO_X	10,184	7,684	8,924	6,143	6,064	3,010	2,523
$PM_{2.5}$-PRI [a]	194	149	297	216	217	100	80
SO_2	437	182	41	28	26	18	8
VOC	6,157	4,681	3,721	2,631	2,348	1,605	827

[a] $PM_{2.5}$ primary emissions, including condensibles and filterables.

TABLE 7—STEUBENVILLE-WEIRTON ONROAD MOBILE SOURCE EMISSIONS

[tpy]

	2002	2005	2008	2011	2014	2017	2020
NH_3	42	43	19	14	12	11	8
NO_X	1,053	810	960	609	546	423	191
$PM_{2.5}$-PRI [a]	18	14	32	22	18	13	7
SO_2	53	19	5	4	3	2	1
VOC	862	667	498	421	377	304	139

[a] $PM_{2.5}$ primary emissions, including condensibles and filterables.

[29] 79 FR 17884 (March 31, 2014) and 79 FR 15019 (March 18, 2014).

EPA also assessed historical and future projected VMT (as provided by state/local transportation organizations) to determine VMT growth trends. For Brooke County and Hancock County in the Steubenville-Weirton Area, VMT is projected to decrease by approximately 2.5 percent between 2020 and 2040. For Kanawha and Putnam counties in the Charleston Area, VMT is projected to decrease by 4.5 percent in that same period.

Because of these air quality and VMT trends, EPA proposes to find that the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area meet the qualification criteria set forth in the $PM_{2.5}$ LMP Guidance and that it would be unreasonable to expect that either area will experience growth in motor vehicle emissions sufficient to cause a violation of the 2006 24-hour $PM_{2.5}$ NAAQS over the second maintenance period.

Transportation plan and transportation improvement program (TIP) conformity determinations that meet applicable requirements continue to be required in these areas (see Table 1 in 40 CFR 93.109). Additionally, project-level conformity determinations must continue to be completed according to all applicable requirements for federally supported highway and transit projects, including the hot-spot requirements for projects in $PM_{2.5}$ nonattainment and maintenance areas.

In addition to these proposed actions, EPA is notifying the public that the Agency is initiating the adequacy process for the Charleston and Steubenville-Weirton LMPs. See 40 CFR 93.118(e)(4) for the criteria EPA considers, and 40 CFR 93.118(f)(2) for the process EPA follows. Since LMPs do not include motor vehicle emissions budgets, in the case of an LMP, EPA's adequacy review is to assess whether the demonstration required by 40 CFR 93.109(e) is met. Any comments on the adequacy of the submitted West Virginia LMPs should be submitted to the dockets established for this rulemaking. If EPA approves the second 10-year LMPs or finds them adequate, the Charleston and Steubenville-Weirton areas will not be required to perform regional emissions analyses but must meet project-level conformity analyses requirements as well as the other transportation conformity criteria. We will complete the adequacy determination process either in the final action on this proposal or by notifying the State in writing, publishing a notice in the **Federal Register** and by posting the finding on EPA's adequacy web page. See 40 CFR 93.118(f).

IV. General Conformity

The general conformity regulations of November 30, 1993 (58 FR 63214), as amended, apply within nonattainment areas and redesignated attainment areas operating under maintenance plans (*i.e.,* maintenance areas). General conformity requires conformity to the purpose of a SIP, which means that Federal activities not related to transportation plans, programs, and projects (*i.e.,* general Federal activities) will not cause or contribute to any new violation of any standard in any area, increase the frequency or severity of any existing violation of any standard in any area, or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area (CAA section 176(c)(1)(A) and (1)(B)). As noted in the October 2022 $PM_{2.5}$ LMP Guidance (EPA–420–B–22–044), EPA's general conformity regulations do not distinguish between maintenance areas with an approved ''full maintenance plan'' and those with an approved LMP. Thus, maintenance areas with an approved LMP are subject to the same general conformity requirements under 40 CFR part 93 subpart B, as those covered by a ''full maintenance plan.'' Nothing less than full compliance with the general conformity program is required within an LMP.

V. Proposed Actions

EPA is proposing to approve the second 10-year $PM_{2.5}$ limited maintenance plan for the Charleston (West Virginia) Area and the West Virginia portion of the Steubenville-Weirton (Ohio-West Virginia) Area. EPA has reviewed the air quality data for these areas and the Agency has determined that: (1) both areas continue to show attainment of the $PM_{2.5}$ NAAQS; and (2) all the LMP requirements, as described in this action, have been met.[30] EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. If finalized, EPA's approval of these LMPs will satisfy the section 175A CAA requirements for $PM_{2.5}$ for the second 10-year maintenance period for the Charleston Area and the West Virginia portion of the Steubenville-Weirton Area. EPA is also initiating the process to determine if the LMPs are adequate for transportation conformity purposes. As discussed in Section III of this document, EPA may complete that process either in its final action on these LMPs or through a separate process provided for in the transportation conformity regulations. See 40 CFR 93.118(f).

[30] EPA finalized approval of the Ohio portion of the Steubenville-Weirton Area's second 10-year 2006 24-hour $PM_{2.5}$ LMP on January 22, 2024 (89 FR 3889).

VI. Statutory and Executive Order Reviews

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

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations

and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (E.J.) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

WVDEP did not evaluate environmental justice considerations as part of either of its SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform E.J. analyses and did not consider E.J. in this proposed rulemaking. Due to the nature of the proposed action being taken here, this proposed rulemaking is expected to have a neutral to positive impact on the air quality of the affected area.

In addition, this proposed rulemaking, regarding the second 10-year limited maintenance plans for the Charleston Area and West Virginia portion of the Steubenville-Weirton Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–06474 Filed 3–26–24; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[GSAR Case 2020–G512; Docket No. 2024–0010; Sequence No. 1]

RIN 3090–AK22

General Services Administration Acquisition Regulation; SAM Representation for Leases

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to remove the requirement for lease offerors to have an active System for Award Management (SAM) registration when submitting offers and instead allow offers up until the time of award to obtain an active SAM registration.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before May 28, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020–G512 to *https://www.regulations.gov* via the Federal eRulemaking portal by searching for ''GSAR Case 2020–G512''. Select the link ''Comment Now'' that corresponds with GSAR Case 2020–G512. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''GSAR Case 2020–G512'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2020–G512, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Michaela Mastroianni, Procurement Analyst, or Ms. Amy Lara, Procurement Analyst, at *gsarpolicy@gsa.gov* or 816–926–7172. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *GSARegSec@gsa.gov* or 202–501–4755. Please cite GSAR Case 2020–G512.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to create a SAM registration provision specific for the acquisitions of leasehold interests in real property. This proposed provision was prompted by the implementation of FAR Case 2015–005 (see 83 FR 48691), which clarified the timing of registration in the System for Award Management (SAM). Effective October 2018, this FAR case implemented the requirement for an offeror to be registered in SAM prior to the submission of an offer as opposed to the offerer being registered prior to award as was previously followed before the FAR change. While leasing of real property is not subject to the FAR, GSA prescribed FAR clause 52.204–7 in solicitations for the lease of real property. It found this FAR amendment had a significant effect on prospective GSA lessors.

On February 12, 2020, GSA issued a deviation to the updated FAR clause to permit the completion of SAM representation for leases prior to award instead of prior to offer for leasing companies. GSA would therefore only require the apparent awardee to complete the SAM registration. This proposed change would codify this provision in the GSAR.

II. Discussion and Analysis

Upon the implementation of FAR Case 2015–005, GSA found the change problematic for the use in real property leases. Due to the nature of real property leases, this change created a negative impact on competition. It is common practice in real estate transactions for an offeror to form a separate entity (LLCs) for each building under their control. Therefore, owners with multiple buildings in their portfolio may have to create a separate SAM registration for every building they wish to submit for the Government's consideration. This becomes burdensome for property owners and becomes a deterrent for property owners to submit offers to the Government. Additionally, this could disqualify an offeror from competition solely based on the lack of SAM registration. This decreases competition and does not promote maximum competition to realize the best value or cost savings to the Government.

While the representation is important for FAR based acquisition, the leasing of real property is not based on the FAR. The protections that SAM registration representations provide to the

Government will still be assured by requiring this SAM representation prior to award but in a way more tailored to the lessor community.

This proposed provision will have a positive effect on the Government and the lessor community as it decreases the burden ultimately leading to increased competition whilst still ensuring SAM registration. Therefore, this rule proposes to use GSAR 552.270–35 in lieu of FAR 52.204–7.

III. Expected Impact of the Rule

This rule is not expected to have a significant impact to Government or industry. This rule will reduce the burden on leasing companies by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer. Completing SAM representations prior to offer for each property is time consuming for a leasing company and burdensome to effective competition. This will streamline the process and encourage competition, which will benefit the Government.

IV. Executive Orders 12866, 13563 and 14904

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (*Modernizing Regulatory Review*) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule not to be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S. 601, *et seq.* because it reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer and does not implement new or changed requirements. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

The Regulatory Secretariat will submit a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2020–G512) in correspondence.

The analysis is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to permit the completion of the System for Award Management (SAM) representations at award instead of at offer for lease procurements.

GSAR coverage does not currently include internal policy and guidance issued in other forms such as Procurement Instructional Bulletins (PIBs). This internal guidance has never been fully vetted to the regulatory level for analysis. This rule proposes to incorporate existing policy and guidance regarding SAM registration for leases into the GSAR.

The objective of the proposed rule is to amend the GSAR to amend Part 552, Solicitation Provisions and Contract Clauses, of the GSAR by creating Subsection 552.270–35, System for Award Management—Leasing.

Currently, each business entity submitting a bid must complete all SAM representations prior to submitting its offer. It is common practice for leasing companies to register each individual property within its portfolio as a separate legal entity. Under the current SAM representation process, a leasing company will have to make separate SAM representations prior to offer for each property within its portfolio as each property is considered a separate entity.

Completing SAM representations prior to offer for each property is time consuming for a leasing company and burdensome to effective competition. To streamline the process and encourage competition, GSA is proposing to permit the completion of SAM representation for leases prior to award instead of prior to offer for leasing companies.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

GSA has approximately 8,000 leases in total. Approximately 70 percent of leasing entities were small entities. This information is based on internal inventory data sources.

GSA does not expect this rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601. This rule reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer, and does not implement new or changed requirements.

The rule involves reporting and recordkeeping that are currently covered under OMB Control Number 9000–0159, System for Award Management Registration (SAM). This rule does not include any new reporting, recordkeeping, or other compliance requirements for small business entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0159, System for Award Management Registration (SAM).

List of Subjects in 48 CFR Parts 552 and 570

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 552 and 570 as set forth below:

■ 1. The authority citation for 48 CFR parts 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Add section 552.270–35 to read as follows:

552.270–35 System for Award Management—Leasing.

As prescribed in 570.702, insert the following provision:

System for Award Management—Leasing (DATE)

In lieu of FAR provision 52.204–7 use the following:

(a) Definitions. As used in this provision—

''Electronic Funds Transfer (EFT) indicator'' means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

''Registered in the System for Award Management (SAM)'' means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM;

(2) The offeror has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record ''Active''.

''Unique entity identifier'' means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See *www.sam.gov* for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM prior to award, and shall continue to be registered during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation ''Unique Entity Identifier'' followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at *www.sam.gov* for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which the entity is commonly recognized.

(3) Company physical street address, city, state, and Zip Code.

(4) Company mailing address, city, state and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company headquarters name and address (reporting relationship within the entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of the solicitation. See *https://www.sam.gov* for information on registration.

[(End of provision)]

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

570.701 [Amended]

■ 3. In section 570.701 amend the table by removing from paragraph (a), in the second column, the entry ''52.204–7 System for Award Management.''

■ 4. Amend section 570.702 by adding in numerical order the entry for ''552.270–35'' to read as follows:

570.702 GSAR solicitation provisions.

* * * * *

552.270–35—System for Award Management—Leasing

[FR Doc. 2024–06442 Filed 3–26–24; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register
Vol. 89, No. 60
Wednesday, March 27, 2024

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 26, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Participant and Program Characteristics 2024 & 2026 Study.

OMB Control Number: 0584–0609.

Summary of Collection: This is a reinstatement, with changes, of a previously approved information collection that was discontinued on 12/31/2022. This data collection effort for the Special Supplemental Nutrition Program for Women, Infants and Children Participant and Program Characteristics Study (WIC PC) is authorized by 7 CFR 246.25(b)(3) (2011). The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS). WIC provides supplemental foods, health care referrals, breastfeeding promotion and support, and nutrition education to nutritionally at-risk, income-eligible pregnant, breastfeeding and non-breastfeeding postpartum women, infants, and children up to age five years. WIC is administered through 89 State agencies consisting of the 50 States, the District of Columbia, 5 territories, and 33 Indian Tribal Organizations (ITOs).

Since 1988, FNS has produced the biennial WIC Participant and Program Characteristics Study (PC) report that describes demographic, income, breastfeeding, and health-related information of a census of WIC participants as well as information on the benefits they receive through WIC. Data used to produce the PC reports are collected from participants by State agencies at the time of participant certification in WIC and then submitted to FNS biennially. FNS uses the regularly updated PC reports to evaluate the impact of the program, support State agencies, estimate budgets, submit civil rights reporting, identify research needs, and review current and proposed WIC policies and procedures.

Need and Use of the Information: The main purpose of this biennial data collection is to provide FNS with information on a census of WIC participants in April of the reporting years (2024 and 2026) to produce the biennial WIC PC 2024 and WIC PC 2026 reports. This study also will include two new data collection efforts that will enhance the utility of the traditional WIC PC data and allow for novel assessment of participant-level program retention, participant health outcomes over time, program utilization, and program cost. One effort will be the collection of up to four years total (two years for each round of WIC PC) of longitudinal, retrospective WIC PC data (longitudinal WIC PC data). The second element will consist of collecting longitudinal, retrospective data on participant redemption of the WIC food package benefits (longitudinal EBT data) from State agencies.

Description of Respondents: State, Local and Tribal Governments.

Number of Respondents: 356.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 6,066.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–06494 Filed 3–26–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2024–0014]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Hass Avocado From Guatemala Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh Hass avocado (*Persea americana* var. Hass) fruit from Guatemala into the United States. Based on the analysis, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh Hass avocado fruit from Guatemala into the United States. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 28, 2024.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2024–0014 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2024–0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Serrano, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (954) 699–4504.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization of Guatemala to allow the importation of Hass avocado (*Persea americana* var. Hass) from Guatemala into the United States. As part of our evaluation of Guatemala's request, we have prepared a pest risk assessment to identify the pests of quarantine significance that could follow the pathway of the importation of fresh Hass avocado (*Persea americana* var. Hass) into the United States from Guatemala. Based on the pest risk assessment, a risk management document (RMD) was prepared to identify phytosanitary measures that could be applied to the fresh Hass avocado (*Persea americana* var. Hass) to mitigate the pest risk.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk assessment and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh Hass avocado (*Persea americana* var. Hass) fruit from Guatemala, may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the pest risk assessment and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh Hass avocado (*Persea americana* var. Hass) from Guatemala in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh Hass avocado (*Persea americana* var. Hass) from Guatemala into the United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of March 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–06601 Filed 3–26–24; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of community forum.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a community forum in a hybrid format. The purpose of the community forum is to discuss the Committee's recently published report on The Status of Civil Rights in the U.S. Virgin Islands and hear from members of the public regarding their perspectives, experiences, or civil rights concerns. To learn more about this community forum, please visit our information page: *https://bit.ly/3vb0YCl.*

DATES: Wednesday, April 10, 2024, from 12:00 p.m.–1:00 p.m. Atlantic Time.

ADDRESSES: The community forum will be conducted in a hybrid format. If you wish to participate in person, you may attend either of the university's campus locations; otherwise, please join virtually via the registation link below.

Locations:

- Albert A. Sheen Campus, St. Croix (University of Virgin Islands), P692+7W2, Golden Grove, UVI Theater 401, St. Croix, USVI 00851
- Orville E. Kean Campus, St. Thomas (University of Virgin Islands), 2 John Brewers Bay, UVI 13D Research and Strategy Innovation Cente, St. Thomas, USVI 00802

Register to Attend Virtually: https://bit.ly/3IJfRPi.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 161 943 9491#.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting in person or virtually. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following

the scheduled meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Opening Remarks
II. Committee Presentation
III. Public Comment
IV. Closing Remarks
V. Adjournment

Dated: March 22, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–06538 Filed 3–26–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Quarterly Survey of Plant Capacity Utilization

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 16, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Quarterly Survey of Plant Capacity Utilization.

OMB Control Number: 0607–0175.

Form Number(s): MQ–C2.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 7,500.

Average Hours per Response: 30 minutes.

Burden Hours: 15,000.

Needs and Uses: The U. S. Census Bureau, on behalf of the Federal Reserve Board (FRB) and the Defense Logistics Agency (DLA), within the Department of Defense (DOD), requests an extension of approval for the Quarterly Survey of Plant Capacity Utilization (QPC). The survey provides information on use of industrial capacity in manufacturing and publishing plants as defined by the North American Industry Classification System (NAICS). The Survey of Plant Capacity Utilization began in the 1970's as an annual survey that collected fourth quarter data only. The annual survey continued through 2006. In 2007, the FRB requested that the survey be converted to a quarterly survey due to the necessity for quarterly data rather than annual. The survey is the only governmental source of capacity utilization rates at industry levels. Changes in capacity utilization are considered important indicators of investment demand and inflationary pressure. For these reasons, the estimates of capacity utilization are closely monitored by government policy makers and private sector decision makers.

This survey utilizes a multi-mode data collection process that includes internet reporting and telephone. The survey collects the value of quarterly production, the value of production that could be achieved if operating under ''full production'' capability, and the value of production that could be achieved if operating under ''emergency production'' capability. The ratio of the actual to the full is the basis of the estimates for full capacity utilization rates and similarly, the actual to the emergency for the emergency capacity utilization rates. The survey also collects information by shift, on work patterns at the actual production level.

The FRB is the primary user of the current QPC data and expressed the need for these quarterly data. FRB publishes measures of industrial production (IP), capacity, and capacity utilization in its G.17 statistical release, which has been designated by the federal government as a Principal Federal Economic Indicator. Utilization rates from the QPC survey are a principal source for the measures of capacity and capacity utilization. The indexes of IP are either estimated from physical product data or estimated from monthly data on inputs to the production process, specifically production worker hours. To maintain the quality of the IP index, the collection of these quarterly data, including the utilization rate data and the workweek of capital, is critical to the indicators of capital input use and industry output.

The FRB uses these data in several ways. First, the QPC data are the primary source of information for the capacity indexes and utilization rates published by the FRB. Second, the QPC utilization rate data are used as indicators of output for some industries in the estimation of monthly IP. Third, the survey responses for reasons operating below capacity are valuable indicators for distinguishing between supply chain bottlenecks versus demand constraints affecting manufacturing. Fourth, the QPC utilization rate data and the workweek data are used to improve the projections of labor productivity that are used to align IP with comprehensive benchmark information from the Economic Census covering the Manufacturing sector and the Annual Survey of Manufactures (ASM). The Census Bureau is launching a new annual survey in 2024, the Annual Integrated Economic Survey (AIES), which will replace the ASM as a source for this benchmark information going forward. Finally, utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflects production changes rather than capacity changes.

The DLA uses the data to assess industrial base readiness and ramp-up time to meet demand for goods under selected national emergency scenarios.

In addition to the FRB and DLA uses, these data are published on the Census Bureau's website, *https://www.census.gov/programs-surveys/qpc.html.*

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 8(b); 50 U.S.C., Section 98, *et seq.;* and 12 U.S.C., Section 244.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the

publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0175.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06479 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Final Results of Antidumping Duty New Shipper Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) has conducted a new shipper review (NSR) of Sudarshan Chemical Industries Limited (Sudarshan) regarding the antidumping duty order on carbazole violet pigment 23 from India (CVP–23). The period of review (POR) is December 1, 2021, through November 30, 2022. Based on our analysis, Commerce finds that Sudarshan did not make sales of subject merchandise at less than normal value during the POR.

DATES: Applicable March 27, 2024.

FOR FURTHER INFORMATION CONTACT: Dennis McClure at (202) 482–5973 or Henry Wolfe at (202) 482–0574, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 2023, Commerce published in the **Federal Register** its preliminary results and indicated that interested parties will be notified of the deadline for the submission of case briefs at a later date.[1] Because Commerce received no comments from any interested party, no decision memorandum accompanies this notice. The deadline for these final results has been extended by 57 days to April 12, 2024.[2]

Commerce conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The product covered by the *Order* is carbazole violet pigment 23. The merchandise subject to the *Order* is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this *Order* is dispositive. For a full description of the scope of the *Order, see* the *Preliminary Results.*

Verification

Commerce verified Sudarshan's questionnaire responses between November 30 and December 8, 2023.[4] We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by Sudarshan.

Changes Since the Preliminary Results

Based on its findings at verification, Commerce made several changes to the *Preliminary Results.* A summary of these changes, which are fully described in the Calculation Memorandum,[5] is as follows:

- Commerce revised the U.S. and comparison market sales databases consistent with the minor corrections provided by Sudarshan at verification.[6]
- For comparison market sales, Commerce revised the reported indirect selling expenses to include certain expenses previously incorrectly reported as general and administrative (G&A) expenses. Commerce also revised the reported inventory carrying costs to use the corrected total cost of manufacturing.[7]
- With respect to the reported cost data, Commerce revised the G&A expense ratio to exclude certain incorrectly reported expenses. Commerce also revised the interest expense ratio to include the net consolidated foreign exchange amount.[8]
- For U.S. sales, Commerce recalculated foreign market indirect selling expenses to reflect the currency in which they were incurred (*i.e.,* Indian rupees). Commerce revised the indirect selling expenses incurred in the United States to include expenses that were previously incorrectly excluded. Additionally, Commerce added the countervailing duties for export subsidies on U.S. sales of CVP–23. Commerce also revised the reported inventory carrying costs incurred in the United States to use the transfer price of CVP–23 between Sudarshan and its United States subsidiary, Sudarshan North America. Further, Commerce revised the inventory carrying costs incurred in the country of manufacture to use the corrected total cost of manufacturing.[9]

Final Results of Review

As a result of this new shipper review, Commerce determines that the following weighted-average dumping margin exists for the POR December 1, 2021, through November 30, 2022:

Producer and exporter	Weighted-average dumping margin (percent)
Sudarshan Chemical Industries Limited	0.00

Disclosure

Consistent with 19 CFR 351.224(b), Commerce intends to disclose to interested parties the calculations performed in connection with these final results of review within five days of after the date of publication of this notice in the **Federal Register**.

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[10] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the

[1] *See Carbazole Violet Pigment 23 from India: Preliminary Results of New Shipper Review; 2021–2022,* 88 FR 82316, 82317 (November 24, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum; *see also* Memorandum, ''Establishment of the Briefing Schedule,'' dated February 2, 2024.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty New Shipper Review,'' dated January 31, 2023.

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India,* 69 FR 77988 (December 29, 2004) (*Order*).

[4] *See* Memorandum, ''Sales and Cost Verification Report for Sudarshan Chemical Industries Limited and Sudarshan North America,'' dated January 31, 2024.

[5] *See* Memorandum, ''Final Determination Margin Calculation for Sudarshan Chemical Industries Limited,'' dated concurrently with this notice (Calculation Memorandum).

[6] *See* Sudarshan's Letter, ''Minor Corrections,'' dated December 4, 2023, at Exhibits 2 and 3.

[7] *See* Calculation Memorandum at 2.

[8] *Id.* at 3.

[9] *Id.* at 3 to 5.

[10] *See* 19 CFR 351.212(b)(1).

Federal Register. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), because Sudarshan's weighted-average dumping margin is zero, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[11]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Sudarshan, no cash deposit will be required; [12] (2) for subject merchandise exported, but not produced by Sudarshan, the cash deposit rate will be the producer's rate, or the all-others rate (*i.e.,* 27.48 percent) [13] if the producer does not have its own rate; and (3) for subject merchandise produced, but not exported by Sudarshan, the cash deposit rate will be the rate applicable to the exporter, or the all others rate if the exporter does not have its own rate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing these final results of the new shipper review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.214(h)(2).

Dated: March 21, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–06523 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[12] Commerce established a combination cash deposit rate for this company, consistent with its practice in new shipper reviews. *See, e.g., Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, In Part; 2014–2015,* 81 FR 12870, 12871 (March 11, 2016).

[13] *See Order,* 69 FR at 77989.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–084, C–570–085]

Supplemental Initiation of Antidumping and Countervailing Duty Administrative Reviews of Certain Quartz Surface Products From the People's Republic of China

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

SUMMARY: The U.S. Department of Commerce (Commerce) has received additional timely requests to conduct administrative reviews of the antidumping duty (AD) and countervailing duty (CVD) orders on certain quartz surface products (quartz surface products) from the People's Republic of China (China). Thus, we are initiating these administrative reviews.

DATES: Applicable March 27, 2024.

FOR FURTHER INFORMATION CONTACT: Ajay K. Menon, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0208.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received additional timely requests, in accordance with the *Supplemental Opportunity Notice,*[1] for administrative reviews of the AD and CVD orders on quartz surface products from China for the company and the periods of review (PORs) noted below.

Initiation of Reviews

In accordance with the *Supplemental Opportunity Notice,*[2] based on requests from Artelye Inc., we are initiating AD and CVD administrative reviews on quartz surface products from China for Unique Stone Sdn. Bhd. (Unique Stone). In accordance with the *Correction Notice,*[3] the expanded POR of the AD review is November 4, 2021, through June 30, 2023, while the expanded POR of the CVD review is November 4, 2021, through December 31, 2022. In accordance with the *Supplemental Opportunity Notice,* Commerce's AD and CVD reviews of Unique Stone will be limited to the company's eligibility to participate in the certification process.[4] Moreover, as noted in the *Supplemental Opportunity Notice,* we will only examine Unique Stone in these AD and CVD reviews to the extent that it has suspended entries of subject merchandise during the expanded AD and CVD PORs noted above.

We intend to issue the preliminary results of these reviews not later than July 30, 2024.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305, which apply to these administrative reviews. Parties wishing to participate in these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of

[1] *See Certain Quartz Surface Products from the People's Republic of China: Expansion of the Period of Review and Supplemental Opportunity To Request Administrative Review,* 89 FR 14055 (February 26, 2024) (*Supplemental Opportunity Notice*); *see also Certain Quartz Surface Products From the People's Republic of China: Expansion of the Period of Review and Supplemental Opportunity To Request Administrative Review; Correction,* 89 FR 17812 (March 12, 2024) (*Correction Notice*).

[2] *See Supplemental Opportunity Notice,* 89 FR at 14056.

[3] *See Correction Notice,* 89 FR at 17812.

[4] *See Supplemental Opportunity Notice,* 89 FR at 14056.

appearance as discussed at 19 CFR 351.103(d)).

Notification to Interested Parties

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 20, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–06470 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results Scope Ruling

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

SUMMARY: On March 11, 2024, the U.S. Court of International Trade (CIT or Court) issued its final judgment in *MCC Holdings dba Crane Resistoflex* v. *United States and ASC Engineered Solutions LLC.,* Court No. 18–00248, Slip Op. 24–30 (CIT March 11, 2024) (*Crane Slip Op. 24–28*), sustaining the final remand results of the U.S. Department of Commerce (Commerce), pertaining to the final scope ruling on certain non-malleable cast iron pipe fittings (pipe fittings) from the People's Republic of China (China). Commerce is therefore amending its Final Scope Ruling to find that ductile iron flanges exported by MCC Holdings dba Crane Resistoflex (Crane) are not within the scope of the antidumping (AD) order on pipe fittings from China. Commerce is also notifying the public that the CIT's final judgment is not in harmony with the Final Scope Ruling.

DATES: Applicable March 21, 2024.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2018, Commerce issued its Final Scope Ruling on pipe fittings from China.[1] In its Final Scope Ruling, Commerce found that Crane's ductile iron flanges were within the scope of the AD order[2] on pipe fittings from China.[3] Crane appealed Commerce's final scope ruling. During the course of litigation, the CIT issued several remand orders culminating in *MCC Holdings dba Crane Resistoflex* v. *United States and ASC Engineered Solutions, LLC,* Court No. 18–00248, Slip Op. 22–128 (November 18, 2022) (*Crane III*). In *Crane III,* the CIT directed Commerce to issue a new determination, based on reasoning that did not misconstrue a previous decision of the court and in a form that would go into effect if sustained upon judicial review, determining whether Crane's ductile iron flanges are within the scope of the *Order.*[4] Pursuant to the CIT's instructions, on remand, and under respectful protest, on December 16, 2022, Commerce found that Crane's ductile iron flanges are outside the scope of the *Order.*[5] On March 11, 2024, the CIT sustained Commerce's Third Remand Redetermination.[6]

Timken Notice

In its decision in *Timken,*[7] as clarified by *Diamond Sawblades,*[8] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's March 11, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's final scope ruling. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

There is now a final scope decision with respect to the Final Scope Ruling. Therefore, Commerce is amending its Final Scope Ruling and finds that the scope of the *Order* does not cover the products addressed in the Final Scope Ruling. The period to appeal the CIT's ruling expires on May 10, 2024. Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for entries of Crane's ductile iron flanges from China. In accordance with the CIT's order sustaining Commerce's third final remand redetermination, Commerce intends to, with the publication of this notice, issue instructions to CBP to lift suspension of liquidation of such entries, and to liquidate entries of the door thresholds without regard to antidumping duties, with consideration for any potential appeal of the CIT's final judgement.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), of the Act.

Dated: March 21, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–06473 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD825]

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 contains all of the required information and warrants further consideration. The EFP would allow a federally permitted fishing vessel to fish outside fishery regulations in support of exempted fishing activities. Regulations

[1] *See* Memorandum, ''Final Scope Ruling on the Antidumping Duty Order on Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: MCC Holdings dba Crane Resistoflex,'' dated November 19, 2018 (Final Scope Ruling).

[2] *See Notice of Antidumping Duty Order: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China,* 68 FR 16765 (April 7, 2003) (*Order*).

[3] *See* Final Scope Ruling.

[4] *See Crane III* at 18–19.

[5] *See Final Results of Redetermination Pursuant to Court Remand, MCC Holdings dba Crane Resistoflex* v. *United States and ASC Engineered Solutions, LLC* Court No. 18–00248, Slip Op. 22–128 (December 16, 2022) (Third Remand Redetermination) available at: *https://access.trade.gov/Resources/remands/22-128.pdf.*

[6] *See Crane Slip Op. 24–28.*

[7] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[8] *See Diamond Sawblades Mfrs. Coal.* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

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 EFPs.

DATES: Comments must be received on or before April 11, 2024.

ADDRESSES: You may submit written comments by the following method:

• *Email: nmfs.gar.efp@noaa.gov*. Include in the subject line ''Haddock Sink Gillnet Exploratory Fishing''.

All comments received are a part of the public record and will generally be posted for public viewing in *https://www.noaa.gov/organization/information-technology/foia-reading-room* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Elise Scholl, Fishery Management Specialist, *Elise.Scholl@noaa.gov,* (978) 281–9189.

SUPPLEMENTARY INFORMATION: This EFP would exempt the participating vessel from the following Federal regulation:

TABLE 1—REQUESTED EXEMPTION

CFR citation	Regulation	Need for exemption
50 CFR 648.80(a)(3)(iv)(B)(1)	Minimum mesh size for Trip Gillnet Vessels in the Gulf of Maine.	To deploy 6-inch (15.24 cm) mesh gillnet gear in Gulf of Maine Regulated Mesh Area.

TABLE 2—PROJECT SUMMARY

Project title	Haddock sink gillnet fishing
Project Start	April 2024.
Project End	May 31, 2024.
Project objectives	To evaluate the efficacy of 6-inch (15.24 cm) mesh gillnet for haddock without increasing the catch of cod and sublegal sized haddock.
Project location	Gulf of Maine.
Number of vessels	1.
Number of trips	12.
Trip duration (days)	3.
Total number of days	36.
Gear type(s)	6-inch (15.24 cm) Gillnet.
Number of tows or sets	16.
Duration of tows or sets	24 hours.

Project Narrative

The proposed EFP is a continuation of a project conducting exploratory fishing in the Gulf of Maine (GOM) that mimics the structure of the GOM Sink Gillnet Mesh Exemption originally approved for sectors from fishing years 2010 through 2012. The objective of the sector exemption was to increase haddock catch while avoiding the catch of cod and sublegal sized haddock. In fishing year 2013, we did not approve the exemption due to concerns regarding the status of the GOM haddock stock, which at the time was subject to overfishing and approaching an overfished condition.

In 2019, the Operational Assessment for GOM haddock determined that the haddock stock was not overfished or subject to overfishing, and that spawning stock biomass was above the biomass target. In 2020, the current applicant proposed an EFP using 6-inch (15.24 cm) mesh gillnets to increase haddock catch without an increased catch of cod or sublegal haddock. The goal of the EFP was to collect data that could be used to inform the efficacy of the 6-inch (15.24 cm) mesh gillnet, and possibly lead to a defined geographic area of a future exemption area. We approved this EFP for fishing years 2021–22 and 2022–23. The proposed EFP would be unchanged from prior EFPs and would be the third year of this project.

From the date of issuance through May 31, 2024, the participating vessel would conduct up to 12 trips under the EFP in the GOM Regulated Mesh Area (RMA) during which it would make up to 16 hauls with 6-inch (15.24 cm) mesh gillnet gear. The maximum number of individual nets that could be deployed is 75. Gillnets would be set for a soak of up to 24 hours, and would be actively tended by the vessel (*i.e.,* the vessel would not leave the fishing grounds while nets are deployed).

A northeast fisheries at-sea monitor or observer would be deployed on all groundfish trips taken under the EFP. Allowable discards would be discarded at-sea, while all other species would be retained, landed, and processed per normal commercial fishing procedures. Monitors would document all discards of allocated sub-legal catch.

While on EFP trips, the vessel may also occasionally deploy longline and 6.5-inch (16.51 cm) mesh gillnet gear, in order to generate catch composition data that could be used to compare the catchability of the 6-inch (15.24 cm) mesh gear with other gears used on a normal fishing trip. The gillnet gear would consist of 12 to 24 nets in a single string, while the longline gear would have between 1,000 and 2,400 hooks. All groundfish catch, including both discards and landings, would be deducted from the appropriate sector allocation and the EFP would not authorize catch above the sector allocation.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06501 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD833]

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: Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 11, 2024.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC Study Fleet EFP''.

FOR FURTHER INFORMATION CONTACT: Elise Scholl, Fishery Management Specialist, (978) 281–9189.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
648.83	Multispecies Minimum Fish Sizes	Allow possession of haddock, yellowtail flounder, winter flounder, and American plaice below minimum size on common pool and sector vessels for biological sampling purposes.
684.86(a)	Haddock Possession Restriction	Allow possession of haddock for biological sampling.
648.86(d)	Small-Mesh Multispecies Possession Restriction.	Exempt vessels from small-mesh possession restrictions for biological sampling.
648.86(g)	Yellowtail Flounder Possession Restriction.	Exempt common pool vessels from yellowtail possession restrictions and limitations.
648.86(j)	Georges Bank Winter Flounder Possession Restriction.	Exempt common pool vessels from winter flounder restrictions.

TABLE 2—PROJECT SUMMARY

Project title	Study fleet program
Applicant	Northeast Fisheries Science Center's Cooperative Research Branch.
Project objectives	Allow fishermen and Center staff to collect biological data and biological samples relevant to stock assessments and fish biology.
Project period	May 1, 2024–April 30, 2025.
Project location	The Gulf of Maine, Georges Bank, Southern New England, and the Mid-Atlantic.
Number of vessels	25.
Number of trips	250.
Trip duration (days)	5.
Total number of days	1,250.
Gear type(s)	Otter trawl, scallop dredge, midwater otter trawl, paired trawl.
Number of tows or sets	7.
Duration of tows or sets	1 hour.

Project Narrative

The Northeast Fisheries Science Center's Cooperative Research Branch is requesting an EFP to allow participants in their Study Fleet Program to collect biological information on catch. The Center established the Study Fleet Program in 2002 to more fully characterize commercial fishing operations and provide sampling opportunities to augment NOAA's National Marine Fisheries Service's data collection programs. As part of the program, the Center contracts commercial fishing vessels to collect biological data and fish specimens for use in research relevant to stock assessments and fish biology.

Under the EFP, Study Fleet participants would be allowed to temporarily possess catch that is below minimum size restrictions and above possession limits for the purposes of biological sampling. When directed by the Center, participating vessels would be authorized to retain and land specific amounts of fish exceeding possession limits and/or below minimum fish sizes, for research purposes only. The captain or crew would deliver these fish to Center staff or local Port Agents upon landing. In these limited circumstances, the Study Fleet Program would give participating vessels a formal biological sampling request prior to landing. This would ensure that the landed fish do not exceed any collection needs of the Study Fleet Program, as detailed below.

During EFP trips, crew would sort, weigh, measure, and collect biological data from fish prior to discarding. During sampling, some discarded fish would remain on deck slightly longer than they would under normal sorting procedures. Exemptions from minimum fish sizes and possession restrictions

would allow vessels to temporarily retain catch for at-sea sampling.

Vessels would be required to comply with all other applicable regulations specified at 50 CFR part 648 and would not be exempt from any inseason quota closures. All catch would be attributed to the appropriate commercial fishing quota. For a vessel fishing on a groundfish sector trip, all catch of groundfish stocks allocated to sectors would be deducted from the vessel's sector's annual catch entitlement (ACE). If the ACE for a stock has been reached in a sector, participating vessels would no longer be allowed to fish in that stock area unless the sector acquires additional ACE for the stock in question. For participating common pool vessels, all groundfish catch would be counted toward the appropriate trimester total allowable catch (TAC). Common pool vessels would be exempt from the possession and trip limits, but would still be subject to trimester TAC closures.

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.

All comments received are a part of the public record and may be posted for public viewing without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

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

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06492 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC937]

Pacific Island Fisheries; Marine Conservation Plan for Guam; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a Marine Conservation Plan (MCP) for Guam.

DATES: This agency decision is effective from March 27, 2024 through August 3, 2026.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2023–0059, from the Federal e-Rulemaking Portal, *https://www.regulations.gov/docket/NOAA-NMFS-2023-0059,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, *https://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Keith Kamikawa, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5177.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands. The Governor of the Pacific Insular Area to which the PIAFA applies must request the PIAFA. The Secretary of State may negotiate and enter the PIAFA after consultation with, and concurrence of, the applicable Governor.

Before entering into a PIAFA, the applicable Governor, with concurrence of the Council, must develop and submit to the Secretary a 3-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA. NMFS is the designee of the Secretary for MCP review and approval. The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected.

In the case of violations by foreign fishing vessels in the EEZ around any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, are deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. The Pacific Insular Area government may use funds deposited into the Treasury of the Pacific Insular Area for fisheries enforcement and for implementation of an MCP.

Federal regulations at 50 CFR 665.819 authorize NMFS to specify catch limits for longline-caught bigeye tuna for U.S. territories. NMFS may also authorize each territory to allocate a portion of that limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Payments collected under specified fishing agreements are deposited into the Western Pacific Sustainable Fisheries Fund, and any funds attributable to a particular territory may be used only for implementation of that territory's MCP. An MCP must be consistent with the Council's FEPs, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects.

At its September 2023 meeting, the Council reviewed and concurred with the MCP. On November 27, 2023, the Governor of Guam submitted the MCP to NMFS for review and approval. The MCP contains the following six conservation and management objectives:

1. Fisheries resource assessment, research and monitoring;
2. Effective surveillance and enforcement mechanisms;
3. Promote ecosystems approach in fisheries management, climate change adaptation and mitigation, and regional cooperation;
4. Public participation, research, education and outreach, and local capacity building;
5. Domestic fisheries development; and
6. Recognizing the importance of island cultures and traditional fishing practices and community based management.

Please refer to the MCP for projects and activities designed to meet each objective, the evaluative criteria, and priority rankings.

This notice announces that NMFS has reviewed the MCP and determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, NMFS has approved the MCP for the time period from the publication of this notice through August 3, 2026. This MCP supersedes the one approved previously for August 4, 2020, through August 3, 2023 (85 FR 55642, September 9, 2020).

Dated: March 22, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06495 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–C–2024–0008]

WIPO Diplomatic Conference on the Design Law Treaty

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO), Department of Commerce, requests public comments on negotiations at the World Intellectual Property Organization (WIPO) regarding a proposed Design Law Treaty (DLT). A diplomatic conference to finalize the DLT will be conducted in Riyadh, Saudi Arabia on November 11–22, 2024. Public comments are requested regarding the DLT.

The negotiations at the Diplomatic Conference will be the culmination of years of discussions at the WIPO Standing Committee on the Law of Trademarks, Industrial Designs, and Geographical Indications (SCT). The provisions of the DLT will pertain to formalities associated with applications for the protection of industrial designs, and its adoption may result in changes to requirements associated with filing these applications in the United States.

DATES: Written comments must be received by June 25, 2024 to ensure consideration.

ADDRESSES: For reasons of government efficiency, comments should be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.* To submit comments via the portal, enter docket number PTO–C–2024–0008 on the homepage and select ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this request for information and select the ''Comment'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included.

Visit the Federal eRulemaking Portal (*https://www.regulations.gov*) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please submit comments by First-Class Mail or Priority Mail to: Keith M. Mullervy, Patent Attorney, Mail Stop OPIA, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Keith M. Mullervy, Patent Attorney, Office of Policy and International Affairs (OPIA), at 571–270–7079.

SUPPLEMENTARY INFORMATION: WIPO is a specialized United Nations agency based in Geneva, Switzerland. The WIPO SCT is a forum at which WIPO Member States [1] and accredited observers facilitate coordination and provide guidance on the development of international law on trademarks, industrial designs, and geographical indications, including the harmonization of national laws and procedures.

The draft DLT aims to help designers obtain easier, faster and cheaper protection for their industrial designs—both in domestic and foreign markets. The DLT would streamline the global system for protecting industrial designs, which are an integral part of many brands, by simplifying and aligning requirements associated with industrial design filings. If approved, these changes would benefit the community of designers, particularly for small-scale designers who may have limited access to legal support for registering their industrial designs. In particular, the DLT would make it significantly easier for small and medium-sized enterprises to obtain industrial design protection overseas as a result of simplified, streamlined and aligned procedures and requirements.

Work on the simplification of procedures for the protection of industrial designs was initially started in the WIPO SCT in 2006 and gradually matured into an initial set of draft Articles (WIPO/SCT/35/2,[2] the ''Industrial Design Law and Practice—Draft Articles'') and draft Regulations (WIPO/SCT/35/3,[3] the ''Industrial Design Law and Practice—Draft Regulations'') for a treaty. Similar treaties already exist in the area of patents (Patent Law Treaty of 2000) and trademarks (Trademark Law Treaty of 1994 and Singapore Treaty on the Law of Trademarks of 2006).

In 2006 and 2007, the SCT requested the WIPO Secretariat to develop a set of questionnaires relating to the formalities of industrial design registration and to the differences between all types of marks and industrial designs, with a view to promoting a better understanding of the different design systems. In response, the Secretariat developed a set of questionnaires on industrial design law and practice and circulated them among SCT members. After receiving replies from the SCT members, the Secretariat compiled a summary of replies to the set of questionnaires (WIPO/Strad/INF/2 Rev.2).[4] In addition, in 2011 and 2012, the SCT requested that the Secretariat prepare a study on the impact of the Draft Articles and Draft Regulations. In response, the Secretariat, with the involvement of the WIPO Chief Economist prepared the study (WIPO/SCT/27/4 [5] and WIPO/SCT/27/4 ADD).[6]

In addition, at its Fifty-Fifth (30th Extraordinary) Session, held in Geneva on July 14–22, 2022, the WIPO General Assembly decided to convene a diplomatic conference (to be held no later than 2024) to conclude and adopt a Design Law Treaty, based on: document WIPO/SCT/35/2; document WIPO/SCT/35/3; the 2019 proposal considered by the WIPO General Assembly, on draft Articles and Regulations on Industrial Design Law and Practice; and any other contributions by Member States. The General Assembly further decided to convene a Preparatory Committee in the second half of 2023 to establish the

[1] WIPO currently has 193 Member States. *www.wipo.int/members/en/.*

[2] *https://www.wipo.int/edocs/mdocs/sct/en/sct_35/sct_35_2.pdf.*

[3] *https://www.wipo.int/edocs/mdocs/sct/en/sct_35/sct_35_3.pdf.*

[4] *https://www.wipo.int/export/sites/www/sct/en/meetings/pdf/wipo_strad_inf_2_rev_2.pdf.*

[5] *https://www.wipo.int/edocs/mdocs/sct/en/sct_27/sct_27_4.pdf.*

[6] *https://www.wipo.int/edocs/mdocs/sct/en/sct_29/sct_27_4_add.pdf.*

necessary modalities of the diplomatic conference. The General Assembly also directed the SCT to meet in a special session for five days in the second half of 2023, preceding the Preparatory Committee, to further close any existing gaps to a sufficient level. Following that session of the WIPO General Assembly, the Secretariat prepared an updated set of draft Articles (WIPO/SCT/S3/4,[7] the ''Industrial Design Law and Practice—Draft Articles'') (''the Draft Articles'') and draft Regulations (WIPO/SCT/S3/5,[8] the ''Industrial Design Law and Practice—Draft Regulations'') (''the Draft Regulations'') for a treaty.

A special session of the SCT, held in Geneva on October 2–6, 2023, worked to close existing gaps in the text based on document WIPO/SCT/S3/4; document WIPO/SCT/S3/5; and any other contributions by Member States. The special session is summarized in document WIPO/SCT/S3/9.[9] In addition, a Preparatory Committee of the Diplomatic Conference, also held in Geneva on October 9, 2023, established the procedures for the diplomatic conference. The Preparatory Committee further determined that the diplomatic conference to conclude and adopt a design treaty will take place in Riyadh, Kingdom of Saudi Arabia, from November 11–22, 2024.[10] The Preparatory Committee meeting is summarized in document WIPO/DLT/2/PM/6.[11]

Request for Comments

This request for comments seeks public/stakeholder input to inform U.S. government participation in the diplomatic conference (scheduled from November 11–22, 2024) to conclude and adopt a Design Law Treaty. The proposed Design Law Treaty is a formalities treaty that would require contracting parties—that is, the countries and intergovernmental organizations that accede to the treaty—to adhere to certain requirements with respect to the protection of industrial designs. Examples of its provisions include:

- Limits on the requirements that contracting parties can impose as a condition for according design application filing dates to applicants;
- Requirements that contracting parties provide design applicants with certain flexibilities, including flexibilities for applicants who miss a time limit during the application process or who unintentionally allow the registration to lapse;
- Requirements that contracting parties must allow design applicants to correct or add a priority claim to an application in certain circumstances;
- Requirements that contracting parties provide for a grace period during which public disclosure would not affect eligibility requirements for obtaining the right; and
- Limits on the requirements that contracting parties may impose as to when applicants can be required to obtain local representation to take an action before the local office.

In addition, certain provisions are the subject of alternative options or proposals supported by several delegations, including:

- Requirements for an applicant disclosure in design applications of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources providing inspiration for, tangentially associated with, or utilized or incorporated in, some aspect of the industrial design;
- Limits on the requirements in requests for recording of a license or a security interest; and
- Effects of the non-recording of a license.

Request for Information

The USPTO welcomes any relevant comments on the topics described in this Request for Comments. However, the USPTO is particularly interested in comments responsive to the questions below. When responding to the questions, please identify yourself. Commenters need not respond to every question and may provide relevant information even if it is not responsive to a particular question.

Questions for Comments

Section I—Observations and Experiences—Generally

1. Please discuss any experiences with filing for industrial design protection outside of the United States, and to the extent possible, please: (a) identify the jurisdiction(s); (b) describe the specific formalities requirements in these jurisdictions; and (c) describe any experiences associated with satisfying the specific formalities requirements in these jurisdictions.

2. Please identify any particular challenges encountered in relation to requirements across jurisdictions when pursuing protection for an industrial design in multiple jurisdictions.

3. Please describe instances, if any, in which particular formality requirements associated with the submission of design applications have resulted in any loss of design rights, additional costs, or other negative consequences.

Section II—Observations and Experiences—Disclosure Requirement Related to Genetic Resource, Traditional Knowledge and Traditional Cultural Expressions

4. Please discuss any experiences with filing for industrial design protection in a jurisdiction that requires disclosure of the source of genetic resources, traditional knowledge, or traditional cultural expressions in an industrial design application, and to the extent possible, please: (a) identify the jurisdiction(s) that required such disclosure; (b) describe the circumstances associated with satisfying the patent disclosure requirement in that jurisdiction; and (c) describe any experiences associated with the ease or difficulty in satisfying the patent disclosure requirement in that jurisdiction.

5. Please characterize the level of difficulty in complying with the aforementioned disclosure requirement. Please describe any anticipated or unanticipated problems that resulted or may result from the disclosure itself or the associated requirement for the disclosure.

6. Please describe how experiences with the disclosure requirement in the aforementioned jurisdiction or other jurisdictions affect the conduct of a design applicant or holder's business. Where possible, please identify the jurisdiction as well as any relevant details of the disclosure requirement.

7. Please identify any type of disclosure requirement associated with the filing of an application for industrial design protection, in particular, requirements pertaining to the disclosure of genetic resources, traditional knowledge, or traditional cultural expressions, that you believe is necessary, and any benefits or detriments stemming from such disclosure requirements.

8. Please share whether the existence of an industrial design disclosure requirement for the source of genetic resources, traditional knowledge, or traditional cultural expressions in an industrial design application was (or is or would be) a consideration in pursuing industrial design protection on a design in a given jurisdiction. Please provide details in relation to relevant sectors, industries or technologies

[7] *https://www.wipo.int/edocs/mdocs/sct/en/sct_s3/sct_s3_4.pdf.*

[8] *https://www.wipo.int/edocs/mdocs/sct/en/sct_s3/sct_s3_5.pdf.*

[9] *https://www.wipo.int/edocs/mdocs/sct/en/sct_s3/sct_s3_9.pdf.*

[10] *https://www.wipo.int/diplomatic-conferences/en/design-law/index.html.*

[11] *https://www.wipo.int/edocs/mdocs/sct/en/dlt_2_pm/dlt_2_pm_6.pdf.*

where this may be a consideration, as well as alternative actions, if any, that the public has taken or would take in lieu of pursuing industrial design protection in that jurisdiction.

9. Would a disclosure requirement related to genetic resources, traditional knowledge, and/or traditional cultural expressions make the industrial design application process more simplified, consistent, straight-forward, and time and cost efficient for applicants, including for small and medium sized enterprises? Please explain why or why not.

10. Should a disclosure requirement related to genetic resources, traditional knowledge, and/or traditional cultural expressions be included in the Design Law Treaty? Please explain why or why not.

Section III—Current Text for Diplomatic Conference

11. Please describe your views on the current working text for an International Legal Instrument Relating to a Design Law Treaty, which has been approved for consideration by the Diplomatic Conference. Please describe recommendations, if any, for additions, deletions, or changes that you would recommend to Articles 1 through 32 of the Articles or to the Common Regulations, namely Rules 1 through 17. These texts can be found at the links below:

(a) Current working text ''substantive articles'' (Articles 1 through 23 from the WIPO Industrial Design Law and Practice—Draft Articles), as revised in the Third Special Session of the Standing Committee on the Law of Trademarks, Industrial Designs, and Geographic Indicators, held in Geneva on October 2–6, 2023, as included as pages 3–22 of Annex I to document WIPO/SCT/S3/9, which can be found on the WIPO website, *https://www.wipo.int/edocs/mdocs/sct/en/sct_s3/sct_s3_9.pdf.*

(b) Current working text ''administrative provisions and final clauses'' (Articles 24 through 32 from the WIPO Draft Administrative Provisions and Final Clauses for a Design Law Treaty), as revised in the Preparatory Committee of the Diplomatic Conference to Conclude and Adopt a Design Law Treaty, held in Geneva on October 9, 2023, as included as pages 2–6 of the Annex to document WIPO/DLT/2/PM6, which can be found on the WIPO website, *https://www.wipo.int/edocs/mdocs/sct/en/dlt_2_pm/dlt_2_pm_6.pdf.*

(c) Current working text ''draft regulations'' (Rules 1 through 17 from the WIPO Industrial Design Law and Practice—Draft Regulations), as revised in the Third Special Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographic Indicators, held in Geneva on October 2–6, 2023, as included as pages 2–14 of Annex II to document WIPO/SCT/S3/9, which can be found on the WIPO website, *https://www.wipo.int/edocs/mdocs/sct/en/sct_s3/sct_s3_9.pdf.*

(d) WIPO has established a website dedicated to the Diplomatic Conference to Conclude and Adopt a Design Law Treaty which can be found at *https://www.wipo.int/diplomatic-conferences/en/design-law/* which contains the aforementioned Articles and Regulations and other information regarding the Diplomatic Conference, the Design Law Treaty being considered, and other related information.

(e) Please identify any additional issues in relation to formalities for industrial designs that you believe should be considered for inclusion in the Design Law Treaty that are not already included or any amendments you recommend to existing provisions. Similarly, please identify any provisions (*e.g.,* Article or Rules) presently included that should not be included. In any of these instances, please explain the rationale for this recommendation of an addition, amendment, or deletion of a provision.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–06390 Filed 3–26–24; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2024–0014]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) is requesting the revision of the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Consumer Response Government and Congressional Portal Boarding Forms,'' approved under OMB Control Number 3170–0057.

DATES: Written comments are encouraged and must be received on or before May 28, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2024–0014 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. 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: Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, 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: Consumer Response Government and Congressional Portal Boarding Forms.

OMB Control Number: 3170–0057.

Type of Review: Revision of a currently approved collection.

Affected Public: State, local, and tribal governments; Federal government.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 14.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) requires the CFPB to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] The Act also requires the CFPB to ''share consumer complaint information with prudential regulators, the Federal Trade Commission, other

[1] Codified at 12 U.S.C. 5493(b)(3)(A).

Federal agencies, and State agencies.'' [2] To facilitate the collection of complaints, the CFPB accepts consumer complaints submitted by Members of Congress on behalf of their constituents with the consumer's express written authorization for the release of their personal information. In furtherance of its statutory mandates related to consumer complaints, the CFPB uses Government and Congressional Portal Boarding Forms (*i.e.,* Boarding Forms) to register users for access to secure, web-based portals. The CFPB has developed separate portals for congressional users and other government users as part of its secure web portal offerings (the ''Government Portal'' and the ''Congressional Portal,'' respectively).[3]

Through the Government Portal, government users can view consumer complaint information in a user-friendly format that allows easy review of complaints currently active in the CFPB process, complaints referred to a prudential Federal regulator, and other closed/archived complaints.

Through the Congressional Portal, Members of Congress and authorized congressional office staff can view data associated with consumer complaints they submit on behalf of their constituents with the consumer's express written authorization for the release of their personal information. The Congressional Portal only displays information about complaints submitted by the individual congressional office.

Changes in this revision reflect the requirements outlined in 12 CFR 1070.43(b)(2) that requires a citation to the agency's legal authority to review, possess, and examine consumer complaints. Therefore, new language and fields have been added to the form.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB'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 summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–06509 Filed 3–26–24; 8:45 am]

BILLING CODE 4810–AM–P

[2] Dodd-Frank Act section 1013(b)(3)(D), codified at 12 U.S.C. 5493(b)(3)(D).

[3] In addition to the boarding forms for congressional and government users, the CFPB utilizes a separate OMB-approved form to board companies onto their own distinct portal to access complaints submitted against them, through OMB Control Number 3170–0054 (Consumer Complaint Intake System Company Portal Boarding Form Information Collection System).

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of the Air Force Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force Scientific Advisory Board, Department of the Air Force.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice in accordance with chapter 10 of title 5, United States Code, to announce that the following meeting of the Department of the Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. 21 March 2024 from 8:30 a.m.–16:30 p.m. Eastern Time and 22 March 2024 from 8:30 a.m.–16:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the Mark Center, Alexandria, VA, 4800 Mark Center Dr., Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Scales, (202) 528–7266 (Voice), *michael.scales.6@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *https://www.scientificadvisoryboard.af.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (as enacted on Dec. 27, 2022, by section 3(a) of Pub. L. 117–286) (formerly the Federal Advisory Committee Act, 5 U.S.C., Appendix), section 552b of title 5, United States Code (popularly known as the Government in the Sunshine Act), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this Department of the Air Force Scientific Advisory Board meeting is to provide dedicated time for members to begin collaboration on research and formally commence the Department of the Air Force Scientific Advisory Board's FY24 Secretary of the Air Force directed studies.

Agenda: [All Times Are Eastern Time]

Thursday, 21 March 2024

8:30 a.m.–10:00 a.m. FY24 Study #1 Update
10:30 a.m.–12:00 p.m. FY24 Study #2 Update
1:00 p.m.–2:30 p.m. FY24 Study #3 Update
3:00 p.m.–04:30 p.m. FY24 Study #4 Update

Friday, 22 March 2024

8:30 a.m.–10:00 a.m. FY24 Study #1 Update
10:30 a.m.–12:00 p.m. FY24 Study #2 Update
1:00 p.m.–2:30 p.m. FY24 Study #3 Update
3:00 p.m.–04:30 p.m. FY24 Study #4 Update

In accordance with section 1009(d) of title 5, United States Code (formerly sec. 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix) and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires this meeting of the United States Department of the Air Force Scientific Advisory Board be closed to the public because it will involve discussions involving classified matters covered by section 552b(c)(1) of title 5, United States Code.

Written Statements: Any member of the public wishing to provide input to the United States Department of the Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c), section 1009(a)(3) of title 5, United States Code (formerly sec. 10(a)(3) of the Federal Advisory Committee Act), and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. The Designated Federal Officer will review all submissions with the Department of the Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the Department of the Air Force Scientific Advisory Board. Written statements received after the meeting that is the subject of this notice may not be considered by the Scientific

Advisory Board until the next scheduled meeting.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–06529 Filed 3–26–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0007]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 26, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Regina Miles, (202) 260–3968.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements.

OMB Control Number: 1880–0543.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Tribal, and Local Governments.

Total Estimated Number of Annual Responses: 20,293,021.

Total Estimated Number of Annual Burden Hours: 1,914,593.

Abstract: The Family Educational Rights and Privacy Act (FERPA) requires that subject educational agencies and institutions notify parents and students of their rights under FERPA and requires that they record disclosures of personally identifiable information from education records, with certain exceptions.

Dated: March 21, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–06460 Filed 3–26–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The collection relates to voluntary carbon dioxide removal (CDR) purchase disclosures.

DATES: Comments regarding this proposed information collection must be received on or before May 28, 2024. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Rory Jacobson, Acting Division Director for Carbon Dioxide Removal, Forrestal Building Rm. 4G–036, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585; or by telephone at (202) 585–1650; or by email at *VoluntaryCDRchallenge@hq.doe.gov* with ''purchase disclosures'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Rory Jacobson, Acting Division Director for Carbon Dioxide Removal, Forrestal Building Rm. 4G–036, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585; or by telephone at (202) 585–1650; or by email at *rory.jacobson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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.

This information collection request contains:

(1) *OMB No.:* 1910–NEW;

(2) *Information Collection Request Title:* Voluntary Carbon Dioxide Removal (CDR) Purchase Disclosures;

(3) *Type of Request:* Regular collection;

(4) *Purpose:* DOE will request voluntary submissions from buyers of CDR services about their purchases, including but not limited to: purchasing entity, supplying entity, removal project details, removal certification details, purchase date, price, and quantity. This request is associated with the Voluntary Carbon Dioxide (CO_2) Removal Purchasing (CO_2RP) Challenge planned to launch in 2024. Information collected will enable DOE to measure the success of the challenge, publish resources improving public understanding of the CDR market, and administer programs stimulating growth of the CDR market;

(5) *Annual Estimated Number of Respondents:* 100 respondents;

(6) *Annual Estimated Number of Total Responses:* 700 responses;

(7) *Annual Estimated Number of Burden Hours:* 350 hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $10,000.

Statutory Authority

Energy Policy Act of 2005 § 969D, 42 U.S.C. 16298d; Infrastructure Investment and Jobs Act, Public Law 117–58 § 41005 (2021).

Signing Authority

This document of the Department of Energy was signed on March 21, 2024, by Jennifer Wilcox, Principal Deputy Assistant Secretary, Office of Fossil Energy and Carbon 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 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 March 22, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–06484 Filed 3–26–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0057; FRL–11683–02–OCSPP]

Certain New Chemicals; Receipt and Status Information for February 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 2/01/2024 to 2/29/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before April 26, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0057, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov. For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 2/01/2024 to 2/29/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical

substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

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

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

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

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 2/01/2024 TO 2/29/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–24–0001A	3	01/29/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0002A	3	01/29/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0009	2	02/01/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0010	2	02/01/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0011	2	02/01/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0012	2	02/01/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–24–0013	2	02/01/2024	CBI	(G) Chemical production.	(G) Chromosomally-modified Saccharomyces cerevisiae.
P–18–0326A	13	02/07/2024	CBI	(G) Chemical Intermediate.	(G) Alkanoic acid, alkyl ester, manuf. of, byproducts from, distn. residues.
P–22–0113A	8	02/02/2024	Solugen, Inc	(G) Chemical intermediate, Additive for consumer, commercial, and industrial applications.	(S) D-Glucaric acid.
P–22–0157A	4	02/13/2024	Evonik Corporation	(S) Polyurethane catalyst.	(S) 1,2-Ethanediamine, N1,N2-dimethyl-N1-(1-methylethyl)-N2-[2-[methyl(1-methylethyl)amino]ethyl]-.
P–22–0157A	5	02/13/2024	Evonik Corporation	(S) Polyurethane catalyst.	(S) 1,2-Ethanediamine, N1,N2-dimethyl-N1-(1-methylethyl)-N2-[2-[methyl(1-methylethyl)amino]ethyl]-.

TABLE I—PMN/SNUN/MCANs APPROVED * FROM 2/01/2024 TO 2/29/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–22–0158A	2	02/08/2024	Aqdot	(G) Additive used in consumer, commercial, and industrial applications.	(S) 1H,4H,14H,17H-2,16:3,15-Dimethano-5H,6H,7H,8H,9H, 10H,11H,12H,13H,18H,19H,20H,21H,22H,23H,24H, 25H,26H-2,3,4a,5a,6a,7a,8a,9a, 10a,11a,12a,13a,15,16,17a,18a,19a,20a,21a,22a,23a,24a, 25a,26a-tetracosaazabispentaleno [1‴,6‴:5″,6″,7″]cycloocta [1″,2″,3″:3′,4′] pentaleno[1′,6′:5,6,7]cycloocta [1,2,3-gh: 1′,2′,3′-g′h′] cycloocta[1,2,3-cd:5,6,7-c′d′] dipentalene-1,4,6,8,10,12, 14,17,19,21,23,25-dodecene, dodecahydro-, stereoisomer;(S) 2,18:3,17-Dimethano-2,3,4a,5a,6a, 7a,8a,9a,10a,11a,12a,13a,14a,15a,17,18,19a, 20a,21a,22a,23a,24a,25a,26a,27a,28a,29a,30aoctacosaazabispentaleno [1⁗,6⁗ :5⁗,6⁗,7⁗]cycloocta[1‴, 2‴,3‴: 3‴,4‴] pentaleno[1‴,6‴: 5″,6″,7″] cycloocta[1″,2″, 3″:3′,4′] pentaleno[1′,6′: 5,6,7]cycloocta[1,2,3-cd: 1′,2′,3′-gh] pentalene- 1,4,6,8,10,12,14,16, 19,21,23,25,27,29-tetradecone, tetradecahydro-, stereoisomer;(S) 2,20:3,19-Dimethano-2,3,4a,5a, 6a,7a,8a,9a,10a,11a,12a,13a,14a,15a, 16a,17a,19,20,21a,22a,23a,24a, 25a,26a,27a,28a,29a,30a,31a,32a, 33a,34adotriacontaazabispentaleno [1⁗, 6⁗:5⁗, 6⁗,7⁗] cycloocta[1⁗, 2⁗,3⁗: 3⁗,4⁗] pentaleno[1⁗, 6⁗:5″, 6″,7″] cycloocta[1″,2″, 3″:3′,4′] pentaleno[1′,6′: 5,6,7]cycloocta[1,2,3-gh:1′,2′, 3′-g′h′] cycloocta[1,2,3-cd:5,6,7-c′d′] dipentalene-1,4,6,8,10,12,14, 16,18,21,23,25,27,29,31,33-hexadecone, hexadecahydro-, stereoisomer;.
P–22–0158A	3	02/20/2024	Aqdot	(G) Additive used in consumer, commercial, and industrial applications.	(S) 1H,4H,14H,17H–2,16:3,15- Dimethano-5H,6H,7H,8H,9H, 10H,11H,12H,13H,18H,19H, 20H,21H,22H,23H,24H, 25H,26H-2,3,4a, 5a,6a,7a,8a,9a,10a,11a, 12a,13a,15,16, 17a,18a,19a,20a, 21a,22a,23a,24a,25a,26a-tetracosaazabispentaleno [1‴,6‴: 5″,6″,7″]cycloocta [1″,2″,3″: 3′,4′]pentaleno [1′,6′:5,6,7] cycloocta[1,2,3-gh:1′,2′, 3′-g′h′] cycloocta[1,2,3-cd:5,6,7-c′d′] dipentalene-1,4,6,8,10,12, 14,17,19,21,23,25-dodecene, dodecahydro-, stereoisomer;(S) 2,18:3,17-Dimethano-2,3,4a,5a, 6a,7a,8a, 9a,10a,11a,12a,13a, 14a,15a,17,18,19a, 20a,21a,22a, 23a,24a,25a,26a,27a,28a,29a,30aoctacosaazabispentaleno [1⁗,6⁗: 5⁗,6⁗, 7⁗]cycloocta[1⁗, 2⁗,3⁗: 3⁗,4⁗] pentaleno[1⁗,6⁗: 5″,6″,7″]cycloocta [1″,2″,3″: 3′,4′]pentaleno[1′,6′:5,6,7]cycloocta[1,2,3-cd: 1′,2′,3′-gh] pentalene-1,4,6,8,10,12, 14,16,19,21,23,25,27,29-tetradecone, tetradecahydro-, stereoisomer;(S) 2,20:3,19-Dimethano-2,3,4a, 5a,6a,7a,8a,9a,10a,11a,12a,13a,14a,15a,16a,17a, 19,20,21a,22a,23a,24a,25a, 26a,27a,28a,29a,30a,31a, 32a,33a,34adotriacontaazabispentaleno [1⁗,6⁗: 5⁗,6⁗, 7⁗]cycloocta [1⁗,2⁗, 3⁗:3⁗, 4⁗]pentaleno [1⁗,6⁗: 5″,6″,7″] cycloocta[1″,2″, 3″:3′,4′]pentaleno [1′,6′:5,6,7]cycloocta [1,2,3-gh:1′,2′, 3′-g′h′] cycloocta[1,2,3-cd: 5,6,7-c′d′] dipentalene- 1,4,6,8,10, 12,14,16,18,21,23,25,27,29, 31,33-hexadecone, hexadecahydro-, stereoisomer;.
P–22–0169A	5	02/23/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0169A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0170A	5	02/23/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0170A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0171A	5	02/23/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0171A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0172A	5	02/23/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0172A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0173A	5	02/23/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 2/01/2024 TO 2/29/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–22–0173A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0174A	5	02/23/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–22–0174A	6	02/29/2024	Solugen, Inc	(G) Additive for industrial and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0025A	3	02/28/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0026A	3	02/28/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0027A	3	02/28/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0101A	7	02/20/2024	CBI	(G) Chemical intermediate.	(G) Glycerides from fermentation of genetically modified microorganism, epoxidized.
P–23–0174A	2	02/23/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P–23–0190	2	02/05/2024	Soulbrain MI	(S) Additive for use in battery electrolyte formulations.	(G) Fluorophospholane, substituted, alkyl.
P–24–0002A	5	02/26/2024	CBI	(G) Photocurable coatings and inks, Ethoxylated/propoxylated trifunctional acrylate monomer.	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, ether with polyol (4:1), 2-propenoate.
P–24–0006A	3	02/08/2024	CBI	(S) Oilfield Production Scale Inhibitor.	(G) Propenoic acid, methyl- [phosphinicobis(oxy-ethanediyl)] ester, telomer with methyl -methyl-propenoate, (phosphonooxy) ethyl methyl-propenoate, propenoic acid, sodium methyl-[(oxo-propen-yl) amino]-propanesulfonate and sodium sulfite, sodium salt, peroxydisulfuric acid sodium salt-initiated.
P–24–0006A	5	02/12/2024	CBI	(S) Oilfield Production Scale Inhibitor.	(G) Propenoic acid, methyl- [phosphinicobis(oxy-ethanediyl)] ester, telomer with methyl -methyl-propenoate, (phosphonooxy) ethyl methyl-propenoate, propenoic acid, sodium methyl-[(oxo-propen-yl) amino]-propanesulfonate and sodium sulfite, sodium salt, peroxydisulfuric acid sodium salt-initiated.
P–24–0006A	6	02/15/2024	CBI	(S) Oilfield Production Scale Inhibitor.	(G) Propenoic acid, methyl- [phosphinicobis(oxy-ethanediyl)] ester, telomer with methyl -methyl-propenoate, (phosphonooxy) ethyl methyl-propenoate, propenoic acid, sodium methyl-[(oxo-propen-yl) amino]-propanesulfonate and sodium sulfite, sodium salt, peroxydisulfuric acid sodium salt-initiated.
P–24–0049	2	02/20/2024	CBI	(G) Additive in paving applications.	(G) Heteromonocyclic functionalized fatty amides.
P–24–0050	2	02/20/2024	CBI	(G) Additives in oilfield applications.	(G) Sodium salts of functionalized fatty acids.
P–24–0051	2	02/20/2024	CBI	(G) Additive in oilfield applications.	(G) Functionalized fatty amidoamine.
P–24–0052	2	02/21/2024	CBI	(G) Chemical precursor.	(G) Functionalized fatty acids.
P–24–0053	1	01/08/2024	CBI	(G) Additive in paving applications.	(G) Fatty acid polyamine condensate.
P–24–0054	1	01/08/2024	CBI	(G) Additive in paving applications.	(G) Fatty acid polyamine condensate.
P–24–0055	1	01/08/2024	CBI	(G) Additive in paving applications.	(G) Fatty acid polyamine condensate.
P–24–0056	1	01/08/2024	CBI	(G) Additive in paving applications.	(G) Fatty acid polyamine condensate.
P–24–0057	3	02/20/2024	CBI	(G) Chemical precursor.	(G) Fatty amidoamine.
P–24–0058	2	02/20/2024	CBI	(G) Additive in paving applications.	(G) Functionalized fatty acids, reaction products with alkene polyamines.
P–24–0059	2	02/20/2024	CBI	(G) Additive in paving applications.	(G) Functionalized fatty acids, reaction products with alkene polyamines.
P–24–0060	2	02/20/2024	CBI	(G) Additive in oilfield applications.	(G) Ammonium salts of functionalized fatty acid esters.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 2/01/2024 TO 2/29/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–24–0061	2	02/20/2024	CBI	(G) Additive in oilfield applications.	(G) Potassium salts of functionalized fatty acid esters.
P–24–0066	1	01/12/2024	Flint Hills Resources.	(S) Raw material in Emulsified Asphalt Production.	(G) Fatty acid polyamine condensate, hydrochlorides.
P–24–0070	2	02/12/2024	CBI	(S) Adhesive Sealant Foam for use in the construction and DIY (do it yourself) applications.	(G) Aryl-dicarboxylic acid, polymer with alkanedioic acid, 2,2-oxypoly[alkanol], polymethylenepolyphenylene isocyanate and alkane diol.
P–24–0070A	3	02/21/2024	CBI	(S) Adhesive Sealant Foam for use in the construction and DIY (do it yourself) applications.	(G) Aryl-dicarboxylic acid, polymer with alkanedioic acid, 2,2-oxypoly[alkanol], polymethylenepolyphenylene isocyanate and alkane diol.
P–24–0071	3	02/15/2024	CBI	(G) Wetting agent	(G) sulfonyl carbamate of ethoxylated fatty alcohol.
P–24–0072	3	02/15/2024	CBI	(G) Wetting agent	(G) sulfonyl carbamate of ethoxylated alkyl alcohol.
P–24–0073	3	02/15/2024	CBI	(G) Wetting agent	(G) secondary alcohol ethoxylate of sulfonyl carbamate.
P–24–0074	3	02/15/2024	CBI	(G) Wetting agent	(G) secondary alcohol ethoxylate of sulfonyl carbamate.
P–24–0076	2	02/12/2024	Crison, LLC	(S) Mining Collector, Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[3-[(3-aminopropyl)amino]propyl]-omega-(1-methylethoxy)-.
P–24–0076A	4	02/20/2024	Crison, LLC	(S) Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[3-[(3-aminopropyl)amino]propyl]-omega-(1-methylethoxy)-.
P–24–0077	2	02/12/2024	Crison, LLC	(S) Mining Collector, Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], -[3-[(3-aminopropyl)amino]propyl]—propoxy-.
P–24–0077A	4	02/20/2024	Crison, LLC	(S) Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[3-[(3-aminopropyl)amino]propyl]-omega-propoxy-.
P–24–0078	2	02/12/2024	Crison, LLC	(S) Mining Collector, Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[3-[(3-aminopropyl)amino]propyl]-omega-butoxy-.
P–24–0078A	4	02/20/2024	Crison, LLC	(S) Asphalt Emulsifier.	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[3-[(3-aminopropyl)amino]propyl]-omega-butoxy-.
P–24–0079	3	02/09/2024	CBI	(G) Fuel Additive ...	(G) Alkyated succinimide.
P–24–0082	2	02/21/2024	CBI	(G) Additive used in 3D printing ink formulations.	(S) 2-Propenoic acid, 3-bromo-2,2-bis(bromomethyl)propyl ester.
P–24–0084	1	02/22/2024	CBI	(G) Coating, Coating ingredient.	(G) Polymer of dicarboxylic acid, aliphatic diols with cycloaliphatic diisocyanate, hydroxyethyl acrylate-blocked.
P–24–0088	1	02/26/2024	HSAGP Energy, LLC.	(G) Substance for use in the manufacture of battery components.	(G) Mixed metal oxide.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 2/01/2024 TO 2/29/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–12–0212	01/24/2024	12/20/2023	N	(G) 1,4-benzenedicarboxylic acid, polymer with bis(hydroxymethyl)alkanediol, alkanedioic acid, alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), 1,3-isobenzofurandione, methyloxoheteromonocycle, 2,2′-oxybis[ethanol] and alkanepolyol.
P–19–0169	02/23/2024	02/13/2024	N	(S) Benzoic acid, 3-fluoro-4-methyl-.
P–19–0172	02/13/2024	02/13/2024	N	(S) Benzoic acid, 3-chloro-2-fluoro-.
P–19–0181	02/13/2024	02/13/2024	N	(S) Benzoic acid, 3-chloro-2-fluoro-, sodium salt (1:1).
P–19–0188A ...	02/08/2024	02/01/2023	Amended the generic chemical name.	(G) Octadecanamide, n,n-dialkyl, salts.
P–20–0007	02/13/2024	02/13/2024	N	(S) Benzoic acid, 3-fluoro-4-methyl-, sodium salt (1:1).
P–20–0070	02/08/2024	02/01/2024	N	(S) Nonanamide, n,n-dimethyl-.
P–21–0175A ...	02/09/2024	09/22/2023	Relinquished chemical identity CBI claim.	(S) Carbonic acid,diphenyl ester, polymer with 1,4-butanediol and 1,10-decanediol.
P–21–0212	02/19/2024	01/22/2024	N	(G) Diketone compound metal complex.
P–22–0050	02/26/2024	02/03/2024	N	(G) Alkene, alkoxy-, polymer with alkoxyalkene.
P–22–0054	02/08/2024	10/17/2023	N	(G) Graphene.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 2/01/2024 TO 2/29/2024

Case No.	Received date	Type of test information	Chemical substance
P–14–0712	02/09/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P–22–0179	02/15/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105); Partition Coefficient (n-octanol/water), Shake Flask Method (OECD Test Guideline 107); Dissociation Constants in Water (OECD Test Guideline 112); Partition Coefficient (n-octanol/water), Estimation by Liquid Chromatography (OECD Test Guideline 117).	(G) Sulfonium, (alkylsubstitutedphenyl)diphenyl-, salt with 1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkyl trisubstitutedbenzoate (1:1).
P–22–0180	02/15/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105); Partition Coefficient (n-octanol/water), Shake Flask Method (OECD Test Guideline 107); Dissociation Constants in Water (OECD Test Guideline 112); Partition Coefficient (n-octanol/water), Estimation by Liquid Chromatography (OECD Test Guideline 117).	(G) Dibenzothiophenium, 5-phenyl-, 4-[1-(heterosubstitutedalkyl)-2,2,2-triheterosubstitutedalkoxy]-4-oxoalkyl trisubstitutedbenzoate (1:1).

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 21, 2024.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024–06437 Filed 3–26–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2024–0087; FRL–11602–01–OW]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Urban Waters Federal Partnership Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Urban Waters Federal Partnership Program (EPA ICR Number 2801.01, OMB Control Number 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2024–0087, to the EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Tara O'Hare, Partnership Programs Branch, Oceans, Wetlands and Communities Division, Office of Wetlands, Oceans and Watersheds, Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8836; fax number: 202–566–1336; email address: *ohare.tara@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Urban Waters Federal Partnership is a voluntary program created in 2011 that seeks to reconnect urban communities, particularly those that are overburdened or economically distressed, with their waterways to become stewards for clean urban waters. Working with a diverse set of partners, the program seeks to help communities restore and protect water quality and revitalize adjacent rural, suburban, and urban neighborhoods throughout the watershed.

As part of its strategic planning efforts, the EPA encourages programs to develop meaningful performance

measures, set ambitious targets, and link budget expenditures to results. Data collected under this ICR will assist the Urban Waters Federal Partnership in demonstrating results and carrying out evaluation efforts to ensure continual program improvement. In addition, the data will help the EPA estimate the environmental and programmatic impact of the program and evaluate the health of the partnership at each location.

Form Numbers: * Forms not yet finalized in *italics.*

- *Workplan Form 6100–084*
- *Annual Reporting Form 6100–085*
- *Partnership Evaluation Form 6100–083*

Respondents/affected entities: Respondents consist of Urban Waters Federal Partnership Ambassadors and a wide variety of organizations and businesses that partner with Ambassadors at each Urban Waters Federal Partnership designated location.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 2,806 (total).

Frequency of response: Urban Waters Federal Partnership designated locations will submit a Workplan every other year. Urban Waters Federal Partnership designated locations will submit Annual Reporting Forms and Partnership Evaluation Forms each year.

Total estimated burden: 9,614 hours (per year) for both Respondents and the EPA. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $671,346 (per year), which includes $0 annualized capital or operation & maintenance costs for both Respondents and the EPA.

Ann Ferrio,

Deputy Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2024–06475 Filed 3–26–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 3:00 p.m. on Friday, March 22, 2024.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Special Review Committee of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities within its authority to act on behalf of the Federal Deposit Insurance Corporation. In calling the meeting, the Special Review Committee determined, by the unanimous vote of Director Jonathan P. McKernan and Director Michael J. Hsu (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(6) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated: March 22, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–06552 Filed 3–25–24; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 26, 2024.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure. Copies of the public application materials, including comments and any responses to the comments submitted by the applicant, will be made available on the Board's public website at *https://www.federalreserve.gov/foia/readingrooms.htm#rr1.*

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Capital One Financial Corporation, McLean, Virginia;* to acquire Discover Financial Services, Riverwoods, Illinois, and thereby indirectly acquire Discover Bank, Greenwood, Delaware. In connection with this application, Capital One Financial Corporation to acquire DFS Services LLC, Riverwoods, Illinois; Discover Financial Services (Canada), Inc., Vancouver, British Columbia, Canada; PULSE Network LLC, Houston, Texas; Diners Club International Ltd., Riverwoods, Illinois; Diners Club Services Private Ltd.—India, Mumbai, India; and Diners Club Services Taiwan Ltd., Taipei, Taiwan, and thereby engage in extending credit and servicing loans, activities related to extending credit, and data processing pursuant to section 225.28(b)(1), (b)(2) and (b)(14), respectively, of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06537 Filed 3–26–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 11, 2024.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Too Many Investors, LLC and Dallen Jon (D.J.) Hogstad, both of Comanche, Oklahoma;* to become members of the Hogstad Control Group, a group acting in concert, to retain voting shares of Commerce Financial Company, and thereby indirectly retain voting shares of Bank of Commerce, both of Duncan, Oklahoma.

2. *PBI Trust 35, Thomas S. Dinsdale, as trustee, both of Grand Island, Nebraska;* to become members of the Dinsdale Family group, a group acting in concert, to retain voting shares of Pinnacle Bancorp, Inc., Omaha, Nebraska, and thereby indirectly retain voting shares of Pinnacle Bank, Lincoln, Nebraska; Pinnacle Bank, Fort Worth, Texas; Pinnacle Bank—Wyoming, Cody, Wyoming; and Bank of Colorado, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–06496 Filed 3–26–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10883 and CMS–10558]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* ADA Dental Claim Form; *Use:* The ADA Dental Claim form and corresponding HIPAA-compliant electronic transaction, known as the 837D, are used widely in the US dental industry to submit claims for health or dental insurance reimbursement.

Medicare has traditionally accepted the Professional (CMS–1500/837P transaction) and Institutional (UB04/837I transaction) claims to provide payment for Medicare-covered services. The Centers for Medicare & Medicaid Services (CMS) now plans to allow providers to submit Medicare-covered dental services on the dental claim form, a similar information collection as the already-approved professional and institutional claim forms.

CMS issued policy clarifications as part of its annual Medicare Physician Fee Schedule (MPFS) Rule that further

define when dental services are inextricably linked to a covered medical service. Additional clarifications were included in the CY2024 MPFS final rule. CMS further established a process by which the agency will consider clinical evidence for future policy clarification consideration. CMS anticipates that these regulatory policy clarifications will result in more dental provider participation in the Medicare program. As a result, the Agency's General Counsel has advised that CMS should begin to accept dental claim formats to remain in compliance with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191). Therefore, CMS through its Part B Medicare Administrative Contractors (MACs) will begin accepting and processing claims submitted by dental providers on the ADA Dental Claim form and HIPAA-standard electronic format equivalent (837D). *Form Number:* CMS–10883; *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500. (For policy questions regarding this collection contact Charlene Parks at 410–786–8684).

2. *Type of Information Collection Request:* Extension of currently approved Information Collection; *Title of Information Collection:* Machine Readable Data for Provider Network and Prescription Formulary Content for FFM QHPs; *Use:* Under 45 CFR 156.122(d)(1)(2), 156.230(b), and 156.230(c), as finalized in the rule, the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018 (CMS–9934–F), established standards for qualified health plan (QHP) issuers for the submission of provider and formulary data in a machine-readable format to the Department of Health and Human Services (HHS) and for posting the data on issuer websites. These standards provide greater transparency for consumers, including by allowing software developers to access formulary and provider data to create innovative and informative tools. On September 30, 2015, the Office of Management and Budget (OMB) granted approval to the data collection Information Collection for Machine Readable Data for Provider Network and Prescription Formulary Content for FFE QHPs under OMB control number 0938–1284. OMB approval was granted again on November 3, 2017, and March 22, 2021. The Centers for Medicare and Medicaid Services (CMS) is continuing that information collection request (ICR) in connection with these machine-readable standards. This ICR serves as a formal request for the renewal of the data collection clearance. The burden estimate for the ICR included in this package reflects the time and effort for QHP and SADP issuers to update and publish the appropriate data and submit it to CMS. No comments were received in response to the 60-day **Federal Register** notice. *Form Number:* CMS–10558 (OMB control number: 0938–1284); *Frequency:* Annually; *Affected Public:* Private Sector, State, Business, and Not-for-Profits; *Number of Respondents:* 434; *Number of Responses:* 434; *Total Annual Hours:* 39,126. (For questions regarding this collection, contact Ana Alza at (667) 290–8569, ext. 70008569).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–06439 Filed 3–26–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2002–D–0176 (Formerly Docket No. 2002D–0350)]

Handling and Retention of Bioavailability and Bioequivalence Testing Samples; Guidance for Industry (Part Draft, Part Final); 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 guidance for industry entitled ''Handling and Retention of BA and BE Testing Samples.'' This guidance is intended to provide recommendations for applicants of new drug applications (NDAs) and abbreviated new drug applications (ANDAs), including supplemental applications, and contract research organizations (CROs), regarding the procedures for handling reserve samples from relevant bioavailability (BA) and bioequivalence (BE) studies, and recommendations regarding responsibilities of each party involved in the study pertaining to reserve samples. Additionally, this guidance describes the conditions under which the Agency generally does not intend to take enforcement action against an applicant or CRO that retains less than the quantity of reserve samples specified in the regulation.

DATES: Submit either electronic or written comments on the draft portion of this guidance by May 28, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Comments on the final portion of this guidance may be submitted at any time for Agency consideration.

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–2002–D–0176 (formerly Docket No. 2002D–0350) for ''Handling and Retention of BA and BE Testing Samples.'' 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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Melissa Mannion, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–672–5296, *Melissa.Mannion@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Handling and Retention of BA and BE Testing Samples.'' This guidance is a revision of the previously issued final guidance of the same name from May 2004 and is intended to provide recommendations for applicants of NDAs and ANDAs, including supplemental applications, and CROs, regarding the procedures for handling reserve samples from relevant BA and BE studies, as required by §§ 320.38 and 320.63 (21 CFR 320.38 and 320.63), and recommendations regarding responsibilities of each party involved in the study pertaining to reserve samples. Additionally, this guidance revises and supersedes the Agency's compliance policy related to the quantity of BA and BE samples retained under FDA regulations described in the final guidance entitled ''Compliance Policy for the Quantity of Bioavailability and Bioequivalence Samples Retained Under 21 CFR 320.38(c)'' (August 2020) (the 2020 Compliance Policy), which is hereby withdrawn.

This guidance is issued in part as final guidance and in part as draft guidance. Specifically, section IV.B. of this guidance is issued as final guidance for immediate implementation. It revises and supersedes the Agency's compliance policy related to the quantity of BA and BE samples retained under § 320.38(c) (21 CFR 320.38(c)) described in the 2020 Compliance Policy, and describes the conditions under which the Agency generally does not intend to take enforcement action against an applicant or CRO that retains less than the quantity of reserve samples (that is, samples of the test article (T) and reference standard (RS) that were used in an in vivo BA or in vivo or in vitro BE study) specified in the regulation. It also supersedes statements related to quantity of reserve samples in section IX. Number of Reserve Samples for BA and BE Testing of the draft guidance entitled ''Nasal Aerosols and Nasal Sprays for Local Action'' (April 2003).

In accordance with section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i)) and the good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)), the Agency is immediately implementing section IV.B. of the guidance on the quantity of reserve samples without prior public comment because FDA has determined that prior public participation is not feasible or appropriate as public comment would not affect the specifications of FDA's testing of retention samples (§ 10.115(g)(2)). FDA has made this determination under § 10.115(g)(2) because, with technological advances, the reduced quantity of reserve samples is sufficient for FDA testing; this reduced quantity will provide a less burdensome approach for applicants and CROs but remains consistent with the Agency's mission to ensure public health. Although this subsection of the guidance document is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation and FDA will consider all comments received and revise the guidance document as appropriate (§ 10.115(g)(3)). The remainder of the guidance is being issued in draft, consistent with the GGP regulation, to solicit public comment prior to implementation.

In the **Federal Register** on November 8, 1990 (55 FR 47034), FDA issued an interim rule that amended, in relevant part, part 320 (21 CFR part 320), by adding a requirement to retain reserve samples of certain drug products (that is, samples of the drug products that were used to conduct BA or BE studies) for a specified period and, when specifically requested, to release the reserve samples to the Agency. The interim rule was intended largely to help ensure BE between generic drugs and their reference listed drugs and to help FDA investigate possible fraud in BA and BE testing. After consideration of public comments, FDA published a final rule in the **Federal Register** on April 28, 1993 (58 FR 25918).

In the final rule, §§ 320.38 and 320.63 require an NDA or ANDA applicant (or, if testing is performed under contract, its CRO) to retain reserve samples of the T and RS that were used to conduct certain in vivo BA studies or an in vivo or in vitro BE study submitted in support of the approval of an application or supplemental application. In the preamble to the final rule, the Agency stated that the study sponsor and/or drug manufacturer should not separate out the reserve samples of the T and RS before sending the drug product to the testing site, to ensure that the reserve samples are in fact representative of the drug product provided by the study sponsor and/or drug manufacturer for the testing. The

Agency also noted that the organization that conducts the BA or BE study is responsible for retaining the reserve samples to eliminate potential sample substitution by the study sponsor and/or drug manufacturer and alteration of any reserve samples from a study before release of drug product samples to FDA.

FDA has observed a number of concerning handling and retention practices upon inspections of clinical and analytical sites that perform BA and BE studies for study sponsors and/or drug manufacturers seeking approval of drug products under NDAs and ANDAs. Based on this experience, FDA is updating and clarifying our recommendations for applicants of NDAs and ANDAs, including supplemental applications, and CROs regarding the procedures related to the handling and retention of reserve samples from relevant BA and BE studies, as required by §§ 320.38 and 320.63. In the context of §§ 320.38 and 320.63, the term applicant includes, as appropriate, study sponsor and/or drug manufacturer and the term CRO refers to any party contracted to help conduct BA or BE testing, including, as appropriate, site management organizations, investigators, and testing sites. Specifically, the guidance highlights: (1) how the T and RS for BA and BE studies should be distributed to the testing sites, (2) how testing sites should randomly select samples for testing and material to maintain as reserve samples, and (3) how the reserve samples should be retained. Examples of typical roles of each stakeholder for the handling and retention of reserve samples in various study settings are also discussed in the guidance.

In response to comments received to the August 2020 Compliance Policy, the Agency has updated its policy on the conditions under which FDA generally does not intend to enforce the quantity requirement at § 320.38(c) (to retain reserve samples of sufficient quantity to permit FDA to perform five times all the release tests required in an application or supplemental application) to reduce further the recommended minimum quantity of reserve samples to be retained. The additional reduction in the recommended minimum quantity described in this guidance relative to what was described in the August 2020 Compliance Policy is reflective of adjustments made to the Agency's procedures to accommodate continued concerns from industry, particularly for studies involving multiple shipments to multiple testing sites, regarding the ability to retain a sufficient quantity of reserve samples.

FDA has determined that, using the Agency's current testing methodology, the updated recommended minimum quantities of reserve samples described in this guidance are sufficient for FDA to conduct the necessary testing of the T and RS samples used in a BA or BE study as intended by the regulation. Accordingly, at this time and based on FDA's current understanding of the risks involved, FDA generally does not intend to enforce the requirement to retain a sufficient quantity to perform five times all the release tests required in the application or supplemental application, so long as the recommended lower quantities in this guidance are retained. This compliance policy is applicable to all reserve samples for BA and BE studies held to date, including reserve samples from previously completed BA or BE studies.

This guidance is being issued consistent with FDA's GGP regulation (§ 10.115). The draft portion of the guidance, when finalized, will represent the current thinking of FDA on ''Handling and Retention of BA and BE Testing Samples.'' A guidance 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. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drug products have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for new drug applications and abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information in part 320 for ''Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans'' have been approved under OMB control number 0910–0672. The recordkeeping requirement for current good manufacturing practice sample retention in 21 CFR 211.170 has been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: March 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06500 Filed 3–26–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4181]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Cattle Materials Prohibited From Use in Animal Food or Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by April 26, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0627. The title of this information collection is ''Cattle Materials Prohibited From Use in Animal Food or Feed.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cattle Materials Prohibited From Use in Animal Food or Feed

OMB Control Number 0910–0627—Extension

This information collection helps to support implementation of section 402 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 342(a)(5)), which governs substances prohibited from use in animal food or feed. Bovine spongiform encephalopathy (BSE) is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. Our regulation at § 589.2001 (21 CFR 589.2001) is designed to safeguard against the establishment and amplification of BSE in the United States through animal feed. The regulation prohibits the use of certain cattle origin materials in the food or feed of all animals. These materials are referred to as ''cattle materials prohibited in animal feed'' or CMPAF. Under § 589.2001, no animal feed or feed ingredient can contain CMPAF. As a result, we impose requirements to maintain adequate written procedures and recordkeeping on renderers that receive, manufacture, process, blend, or distribute raw material from cattle and to make these records available for inspection and copying by FDA to demonstrate they are taking measures to ensure that CMPAF is not introduced into animal feed.

Under § 589.2001(f), we may designate a country from which cattle materials are not considered CMPAF. A country seeking to be so designated must send a written request to the Director of the Center for Veterinary Medicine, including certain required information. We use the information provided to determine whether to grant a request for designation and to impose conditions if a request is granted. Additionally, designated countries will be subject to our future review to determine whether their designations remain appropriate. As part of this process, we may ask designated countries at any time to confirm that their BSE situation and the information submitted by them in support of their original application remains unchanged. We may revoke a country's designation if we determine that it is no longer appropriate. Therefore, designated countries may respond to our periodic requests by submitting information to confirm their designations remain appropriate.

The reporting and recordkeeping requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know whether the cattle material meets the requirements of our regulation.

Description of Respondents: Respondents to this information collection are foreign governments seeking designation under § 589.2001(f) and private sector rendering facilities that process cattle materials under § 589.2001(c).

In the **Federal Register** of October 12, 2023 (88 FR 70676), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although three comments were received, the comments were not responsive to the four collection of information topics solicited.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
589.2001(f); Request for designation by FDA for exemption from requirements of this regulation and response to request for review by FDA	1	2	2	33	66

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since the last renewal, we reduced the request for designation average burden per response by 40 hours (from 80 hours to 40 hours). We take this reduction because foreign governments are required to provide this information to other entities in order to comply with international standards and therefore will have already compiled the necessary information. The average burden per response to a request for review by FDA remains the same (26 hours). The burden we attribute to reporting activities is assumed to be distributed among the individual elements of the information collection activities.

Since the effective date of the regulations in 2009, only two requests for designation have been received; however, we retain our current estimate of one respondent to permit such requests for designation by respondents and also to permit related responses to FDA.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
589.2001(c)(2)(ii), 589.2001(c)(2)(vi), and (c)(3)(i), and 589.2001(c)(3)(i)(A) and (B); Rendering facilities maintain written procedures and records, and certification or documentation from the supplier	145	1	145	45	6,525

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 2 reflects an adjustment decrease in our recordkeeping burden estimate, based primarily on consolidation within the industry and the related decrease in the estimated number of respondents subject to recordkeeping requirements. The burden we attribute to recordkeeping activities is assumed to be distributed among the individual elements and averaged among respondents. The total number of recordkeepers contains a

subset of 50 recordkeepers who maintain written procedures and records specifically required by § 589.2001(c).

Based on our review since the last OMB approval, there is an overall adjustment decrease of 2,565 burden hours. The adjustment is attributable to decreases in the average reporting burden time and in respondents subject to recordkeeping requirements.

Dated: March 21, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06438 Filed 3–26–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 3, 2024.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Pamela Gilden, Branch Chief, Science Planning and Operations Branch, Division of AIDS, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9831, Rockville, MD 20852–9831, 301–594–9954, *pamela.gilden@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 21, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06461 Filed 3–26–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

A portion of the meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 3, 2024.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: Report of Institute Director.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall, Rockville, MD 20852 (Hybrid Meeting).

Closed: 11:45 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40B, Bethesda, MD 20892–9834, (240) 669–5036, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: June 3, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Garden Room 2, Rockville, MD 20852 (Hybrid Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Garden Room 2, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40B Bethesda, MD 20892–9834, (240) 669–5036, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Immunology and Transplantation Subcommittee.

Date: June 3, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Garden Room 1, Rockville, MD 20852 (Hybrid Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Garden Room 1, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institutes of Health, NIAID, National Institutes of Health, 5601 Fishers Lane, Room 3F40B, Bethesda, MD 20892–9834, (240) 669–5036, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 3, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Grand Hall, Rockville, MD 20852 (Hybrid Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Conference Room: Grand Hall, 5601 Fishers Lane, Rockville, MD 20852 (Hybrid Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40B, Bethesda, MD 20892–9834, (240) 669–5036, *poeky@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.niaid.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 21, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06462 Filed 3–26–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Committee; April 2024 Meetings

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The National Boating Safety Advisory Committee (Committee) will conduct meetings over three days in Austin, Texas to discuss matters relating to national boating safety. The meetings will be open to the public and will include in-person and virtual attendance options.

DATES:

Meetings: The Committee will meet on Tuesday April 23, 2024, from 8 a.m. to 4:30 p.m. Central Daylight Time (CDT). The Boats and Associated Equipment, Prevention Through People, and Recreational Boating Safety Strategic Planning Subcommittees will meet on Wednesday, April 24, 2024, from 8 a.m. to 4:30 p.m. (CDT). The full Committee will meet again on Thursday, April 25, 2024, from 8 a.m. until 12 p.m. (CDT). These meetings may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than April 16, 2024.

ADDRESSES: The in-person meeting will be held at the Texas Parks and Wildlife Building, 4200 Smith School Rd., Austin, Texas 78744.

To join the meeting virtually or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. CDT on April 16, 2024. The number of virtual lines is limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending the virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Boating Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Thomas Guess at *NBSAC@uscg.mil* or call (206) 815–0221 as soon as possible.

Instructions: You are free to submit comments in writing at any time or make them orally at the meetings as time permits, but if you want Committee members to review your comments before the meetings, please submit your comments no later than April 16, 2024. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2010–0164 in the search box and click ''Search.'' Next, look for this notice in the Search Results column, and click on it. Then click on the Comment option.

If you cannot submit your material using *https://www.regulations.gov,* email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this notice for alternate instructions. You must include the docket number USCG–2010–0164. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *https://www.regulations.gov.* For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Guess, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee, telephone (206) 815–0221 or via email at *NBSAC@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15105. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Boating Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security via the Commandant of the United States Coast Guard on matters relating to national boating safety. This notice is issued pursuant to 46 U.S.C. 15109(a).

Agenda

The agenda for the National Boating Safety Advisory Committee meeting is as follows:

Day 1

Tuesday, April 23, 2024

(1) Call to Order.
(2) Roll Call of Members.
(3) Opening Remarks by Chairperson.
(4) Opening Remarks by Director of Texas Parks and Wildlife.
(5) Opening Remarks by Senior U.S. Coast Guard Leadership.
(6) Swearing In of New Members.
(7) Memorial of Mr. Terry West, Georgia Boating Law Administrator.

(8) Minutes Approval and Pending Agenda Items from NBSAC 8.
(9) U.S. Coast Guard Public Affairs Presentation on U.S. Coast Guard Communications Capabilities.
(10) National Recreational Boating Safety Survey Update.
(11) Program Updates:
a. Recreational Boating Safety (RBS) Calendar.
b. Lifejacket Approval Harmonization Update.
c. Uniform Certificate of Titling Act for Vessels, Titling,
d. Vessel Identification System Update.
e. Strategic Plan Dashboard.
f. Data Analysis Project Dashboard.
(12) Recommendations Dashboard
a. Life Jacket wear on boats less than 16 feet in length.
b. Data analysis on Emergency Locator Beacons.
c. Update on throwables equivalency.
d. Alternatives to flares.
e. Task Closure of Task Statement 1, Resolutions and Task Statement 2, Strategic Plan.
f. Rental vessel survey.
g. Acceptance of report on Human Factors.
h. Timeline for Task Statement 3, Standards.
i. Progress update on outstanding Task Statements.
(13) Grant Product Warehousing Update.
(14) Grant Evidence Modeling Update.
(15) Social Media Calendar Update for Feb–Oct.
(16) Engine Cut-Off and other Citations issued by U.S. Coast Guard and States.
(17) Regulatory Projects Update.
(18) Digital Certificate of Number Certificate of Number Update.
(19) Grant Product Profiles.
a. JSI Life Jacket Wear Rate Observation Study.
(20) Review of Common Deficiencies.
(21) Hull Identification Number (HIN) exemption for Stand-Up Paddleboards and Kite Boards; assignment of HINs to vessels previously exempted.
(22) Preliminary Statistics Report.
(23) Public Comment Period.
(24) Whale Protection Rulemakings Update.
(25) Fees Recommendation Update.
(26) California and Maine State Law on Visual Distress Signals Flares; confusion of enforcement on electronic Visual Distress Signaling Devices among States.
(27) Maritime Mobility Service Identity and Digital Selective Calling Update.
(28) Lithium-Ion Batteries Update.
(29) Meeting Recess.

Day 2

Wednesday, April 24, 2023

Subcommittee Meetings

(1) Boats and Associated Equipment Subcommittee.
a. Issues to be discussed, ''Boats and Associated Equipment Items.''
(2) Prevention Through People Subcommittee.
a. Issues to be discussed, ''Prevention through People items.''
(3) Recreational Boating Safety Strategic Planning Subcommittee.
a. Issues to be discussed, ''The National RBS Strategic Plan.''

Day 3

Thursday, April 25, 2024

The full Committee will resume meeting.
(1) Call to Order.
(2) Subcommittee Out-briefs.
(3) Discussion of Subcommittee recommendations and Committee Actions.
(4) Full Committee Open Discussion of Boating Safety Related Topics.
(5) Public Comment Period.
(6) Voting on any recommendations to be made to the U.S. Coast Guard.
(7) Administration.
(8) Closing Remarks.
(9) Adjournment of Meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-boating-safety-advisory-committee-(nbsac)/committee-meetings* no later than April 22, 2024. Alternatively, you may contact Mr. Thomas Guess as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period from approximately 3:00 p.m. until 3:15 p.m. CDT on April 23, 2024, and on April 25, 2024, from 10:00 a.m. until 10:15 a.m. CDT. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Notice of Future 2024 Committee Meetings

To receive automatic email notices of future National Boating Safety Advisory Committee meetings in 2024, go to the online docket, USCG–2010–0164 (*https://www.regulations.gov/docket/USCG-2010-0164*). Next, click on the ''Subscribe'' email icon. We plan to use the same docket number for notices of all 2024 meetings of this Committee. When the next meeting notice is published and added to the docket, you will receive an email alert. In addition, you will receive notices of other items being added to the docket.

Dated: March 21, 2024.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2024–06503 Filed 3–26–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–16]

30-Day Notice of Proposed Information Collection: Technical Suitability Products; OMB Control No.: 2502–0313

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* April 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 3, 2023 at 88 FR 42737.

A. Overview of Information Collection

Title of Information Collection: Technical Suitability of Products.

OMB Approval Number: 2502–0313.

OMB Expiration Date: 3/31/2024.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–92005, Description of Materials.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products program, which provides for the acceptance of new materials and products used in buildings financed with HUD-insured mortgages. This includes new single-family homes, multi-family homes, and healthcare-type facilities.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 39.

Estimated Number of Responses: 39.

Frequency of Response: 1.

Average Hours per Response: 26.

Total Estimated Burden: 1,131 hours.

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–06505 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–17]

30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents, OMB Control No.: 2502–0524

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* April 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 31, 2023 at 88 74505.

A. Overview of Information Collection

Title of Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents.

OMB Approval Number: 2502–0524.

Type of Request: Revision of currently approved collection.

Form Number: HUD–92901, HUD–92902, HUD–92051, HUD–92541, HUD–92544, HUD–92561, HUD–92564–CN, HUD–92800.5b, HUD–92900–A, HUD 92900–C, HUD–1, HUD–1a, HUD–9991, HUD–9992, FNMA–1003, FNMA–1004, FNMA–1004C, FNMA–1004D, FNMA–1007, FNMA–1009, FNMA–1025,

FNMA–1073, FNMA–1103, NPMA–99A, NPMA–99B.

Description of the need for the information and proposed use: The Home Equity Conversion Mortgage (HECM) program is the Federal Housing Administration's (FHA) reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM Program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The currently approved information collection is necessary to screen mortgage insurance applications in order to protect the FHA insurance fund and the interests of consumers and potential borrowers.

Form HUD–92901, Home Equity Conversion Mortgage (HECM) Anti-Churning Disclosure has been revised to: (1) update the Privacy Act notice and Notice the Borrower; (2) include the purpose of the disclosure and Public Reporting Burden Statement; (3) wholly revise the table for the mortgagee's best estimate of the total cost of the refinancing to the borrower and increase in the borrower's principal limit; (4) added a mortgagee's certification and revised the borrower's acknowledgement; (5) included a warning of the actions that may be taken against anyone who knowingly submits a false claim or makes a false statement.

HUD also seeks to transition from the discontinued Fannie Mae form 1009, Residential Loan Application for Reverse Mortgages to Fannie Mae form 1003, Uniform Residential Loan Application that is also used in the mortgage industry by Government Sponsored Enterprises to originate conventional mortgages. HUD plans to replace its use of form HUD 92900–A, HUD/VA Addendum to Uniform Residential Loan Application with form HUD 92900–C, HUD Addendum to Uniform Residential Loan Application for Reverse Mortgages. The purpose of form HUD 92900–C is to collect loan-level data that is needed for insuring purposes and not found on Fannie Mae form 1003. The standard loan application to originate a HECM will comprise Fannie Mae form 1003, form HUD–92900–C, and Fannie Mae form 1103, Supplemental Consumer Information Form, which has been adopted by the mortgage industry and is being added to this information collection.

This collection is being revised to also to add the model Home Equity Conversion Mortgage (HECM) Program Disclosure to serve as a compliance aid for mortgagees to satisfy the regulatory requirements at 24 CFR 206.13 by providing borrowers with a disclosure the explains all products, features, and options of the HECM program that HUD will insure.

Respondents: Mortgagees.

Estimated Number of Respondents: 224.

Estimated Number of Responses: 444,408.

Frequency of Response: Varies.

Average Hours per Response: 0.05 to 2.00.

Total Estimated Burdens: $20,425,126.14.

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–06506 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6450–D–02]

Order of Succession for the Office of Departmental Equal Employment Opportunity

AGENCY: Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development (HUD).

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Director of the Office of Departmental Equal Employment Opportunity (ODEEO) designates the order of succession for ODEEO. This order of succession supersedes all prior Orders of Succession for ODEEO.

DATES: Applicable Date: March 21, 2024.

FOR FURTHER INFORMATION CONTACT: Lee Ann Richardson, Deputy Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 9244, Washington, DC 20410, telephone number (202) 405–5127 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/* telecommunications-relay-service-trs.

SUPPLEMENTARY INFORMATION: The Director of ODEEO is issuing this order of succession of officials authorized to perform the duties and functions of the Director of ODEEO when the Director is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior Orders of Succession for ODEEO.

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345 *et seq.,*) during any period when, by reason of absence, disability, or vacancy in office, the Director is not available to exercise the powers or perform the duties of the Director of ODEEO, the following officials within ODEEO are hereby designated to exercise the powers and perform the duties of the Director of ODEEO. These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position

precedes theirs in this order, are not available to act by reason of absence, disability or vacancy in office. No individual who is serving in an office listed below in an acting capacity may perform the duties of the Director of ODEEO pursuant to this Order of Succession. Accordingly, the Director of ODEEO designates the following Order of Succession:

(1) Deputy Director;

(2) Director, Equal Employment Opportunity Division;

(3) Director, Affirmative Employment Division.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for ODEEO.

Authority: Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: March 21, 2024.

Wayne Williams,

Director, Office of Departmental Equal Employment Opportunity.

[FR Doc. 2024–06472 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–15]

30-Day Notice of Proposed Information Collection: Notice of Proposed Information Collection for Public Comment: Mod Rehab SRO—Renewal HAP & Rent Calculation Form, OMB Control No.: 2506–0216

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice of proposed information collection.

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 an additional 30 days of public comment.

DATES: *Comments due date:* April 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 26, 2023 at 88 FR 66043.

A. Overview of Information Collection

Title of Information Collection: Mod Rehab SRO Renewal HAP & Rent Calculation Form.

OMB Approval Number: 2506–0216.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: This submission is to request an extension of a currently approved collection for reporting burden associated with the Renewal Housing Assistance Payments (HAP) Contract and Rent Calculation Form for the renewal of expiring contracts under the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program. This submission is limited to the SRO renewal process under the Multifamily Assisted Housing Reform and Affordability Act of 1997 Act (MAHRA). The information to be collected will be used to facilitate the execution of a renewal HAP contract for expiring SRO projects set at the correct renewal rents as required by MAHRA. HUD will use this detailed information to determine the correct renewal rents as observed in the renewal HAP contract. The regulations covering section 8 SRO renewals are contained in 24 CFR part 402.5(b) (1–2).

Respondents: Public Housing Agencies (PHAs) administering the SRO HAP contracts and owner/sponsors of the SRO project.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Frequency of Response: 1 time annually.

Average Hours per Response: 5.

Total Estimated Burdens: The total number of hours needed for all reporting is 1,500 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Renewal HAP Contract	300	1	300	2	600	$40.00	$60,000
Rent Calculation Worksheet	300	1	300	3	900	.....	.....
Submission Subtotal	300	1	300	5	1,500	40.00	60,000
Total Grant Program Application Collection:							
Total	300	1	300	5	1,500	40.00	60,000

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;

(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; and

(5) Ways to minimize the burden of the collection of information on those who are respond, including the use of automated collection techniques or other forms of information technology.

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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–06504 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7083–N–01]

60-Day Notice of Proposed Information Collection Requirement: Comment Request Implementation of the Housing for Older Persons Act of 1995 (HOPA), OMB Control No: 2529–0046

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed extension, without change, of a currently approved information collection requirement established under the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the proposal.

DATES: *Comments Due Date:* May 28, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Erik Heins, Director, Enforcement Support Division, FHEO Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–2000; telephone (202) 402–5887 (this is not a toll-free number); or email at *Erik.A.Heins@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service.trs.*

SUPPLEMENTARY INFORMATION: HUD is submitting this proposed extension, without change, of a currently approved information collection requirement to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35, as amended].

A. Overview of Information Collection

Title of Information Collection: Implementation of the Housing for Older Persons Act of 1995 (HOPA).

OMB Control Number: 2529–0046.

Type of Request: Proposed extension, without change, of a currently approved information collection requirement.

Description of the need for the information and proposed use: The Fair Housing Act [42 U.S.C. 3601 *et seq.*], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''*housing for older persons*'' from liability for familial status discrimination: (1) housing provided under any State or Federal program which the Secretary of HUD determines is ''*specifically designed and operated to assist elderly persons (as defined in the State or Federal program*)''; (2) housing ''*intended for, and solely occupied by persons 62 years of age or older*''; and (3) housing ''*intended and operated for occupancy by at least one person 55 years of age or older per unit* ['55 or older' housing].'' In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Pub. L. 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.*'' In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *at least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age of older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''*rules issued by the Secretary for verification of occupancy, which shall . . . provide for* [age] *verification by reliable surveys and affidavits.*''

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, during a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date on which the alleged Fair Housing Act violation occurred.

The HOPA information collection requirements are necessary to establish a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of

dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's ''*80 percent occupancy*'' requirement and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units that are actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: Housing providers claiming eligibility for the HOPA's ''55 or older'' housing exemption must demonstrate ongoing compliance with the HOPA exemption requirements. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours [See Table below].

Type of collection activity	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
One: Collect reliable age verification records for at least one occupant per dwelling unit to meet the HOPA's minimum ''80% occupancy'' requirement	1,000	1	1,000	1	1,000	$20.02	$20.02
Two: Publication of & adherence to policies & procedures that demonstrate intent to operate ''55 or older'' housing	1,000	1	1,000	2	2,000	20.02	40,040
Three: Periodic updates of age verification records	1,000	1	1,000	2.50	2,500	20.02	50,050
Total Burden Hours & Costs			3,000		5,500		110,110

B. Solicitation of Public Comments

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD's program functions; (2) Evaluate the accuracy of HUD's assessment of the paperwork burden that may result from the proposed information collection; (3) Enhance the quality, utility, and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Erik A. Heins,

Director, Enforcement Support Division, FHEO Office of Enforcement.

[FR Doc. 2024–06507 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6450–D–01]

Delegation of Authority for the Office of Departmental Equal Employment Opportunity

AGENCY: Office of the Secretary, Department of Housing and Urban Development (HUD).

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary of HUD delegates concurrent authority to the Director and Deputy Director of the Office of Departmental Equal Employment Opportunity (ODEEO) with respect to all matters pertaining to the work of ODEEO and supersedes any prior delegation of authority for ODEEO including the delegation of authority published in the **Federal Register** on June 22, 2011.

DATES: This delegation of authority is effective March 21, 2024.

FOR FURTHER INFORMATION CONTACT: Wayne Williams, Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development, Room 2134, 451 7th Street SW, Washington, DC 20410–6000, telephone number 202–402–4053. (This is not a toll-free number.) HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: For HUD, a commitment to equal opportunity is fundamental, not only relative to the public's expectations of fair housing without discrimination, but also to HUD's employment of a workforce that reflects the communities it serves. HUD remains committed to building a leading equal employment opportunity (EEO) program. Section 1614.102 of title 29, Code of Federal Regulations requires that the agency's EEO program be organized and structured to maintain a workplace that is free from discrimination in any of the agency's policies, procedures, or practices. It also provides that the EEO program supports the agency's strategic mission and that the ODEEO Director be under the direct supervision of the agency head. The ODEEO Director, Deputy Director, and other ODEEO professional staff that are responsible for EEO programs must have regular and effective means of informing the agency head and senior management officials of the status of EEO programs and must be involved in, and consulted on, management/personnel actions.

Section A. Authority Delegated

The Secretary hereby delegates to the Director and Deputy Director of ODEEO concurrent authority and responsibility to promulgate and implement all policies, procedures, and practices to operate a model EEO program. The Secretary may revoke the authority authorized herein, in whole or part, at any time.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued or to issue or waive regulations.

Section C. Authority To Redelegate

The authority delegated in this document may be redelegated.

Section D. Authority Superseded

This Delegation of Authority supersedes all prior delegations of authority for ODEEO including the delegation of authority published in the **Federal Register** on June 22, 2011 (76 FR 36567).

Authority: Section 7(d) of the United States Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 21, 2024.

Marcia L. Fudge,

Secretary.

[FR Doc. 2024–06471 Filed 3–26–24; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Submission for OMB Review; Comments Request

AGENCY: Inter-American Foundation.

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. The agencies received one comment in response to the sixty (60) day notice and have not made changes to the information collection in response to that comment. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by April 26, 2024.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Nicole Stinson, Associate General Counsel, Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200 North, Washington, DC 20004.
- *Email: nstinson@iaf.gov.*

Instructions: All submissions received must include the agency name and agency form name or OMB control number for this information collection. Electronic submissions must include the agency form name in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Associate General Counsel: Nicole Stinson, (202) 683–7117.

SUPPLEMENTARY INFORMATION: The agency received one comment in response to the sixty (60) day notice published in **Federal Register** volume 88 page 40844 on June 22, 2023. Upon publication of this notice, IAF will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Grantee Social Inclusion Consultation.

Type of Review: New information collection.

OMB Control Number: Not assigned, new information collection.

Type of Respondent/Affected Public: IAF Grantees and non-grantees (women, youth, people with disabilities, Indigenous people, LGBTQ+ people and Afro-descendants).

Frequency: This is a one time data collection effort.

Abstract: Currently, the IAF is soliciting comments concerning the information collection to carry out an equity gap analysis with grantees and underserved populations in Latin America and Caribbean countries where the IAF currently has grant programs. The quantitative and qualitative data collection, which is a priority identified in the IAF's Equity Action Plan, in compliance with Executive Order 13985, would serve to better understand the barriers those groups face to (a) accessing IAF programming and (b) achieving their development objectives.

Findings will help the IAF adjust its practices to better support marginalized groups and the grantees who work with them, and to identify networks and platforms through which we can expand our outreach across marginalized populations.

Dated: March 21, 2024.

Natalia Mandrus,

Associate General Counsel, Office of the General Counsel.

[FR Doc. 2024–06432 Filed 3–26–24; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Advisory Board of Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a two-day in-person and online meeting. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The BIE Advisory Board meeting will be held Thursday, April 25, 2024, from 8:00 a.m. to 4:30 p.m. MST and Friday, April 26, 2024, from 8:00 a.m. to 4:30 p.m. MST.

ADDRESSES: The onsite meeting location will be at the Sheraton Albuquerque Uptown Hotel located at 2600 Louisiana Blvd. NE, Albuquerque, NM 87110. To attend virtually, participants may use this link to register: *https://www.zoomgov.com/meeting/register/vJIsfuyrqD4rGEQsjzXDBN2G1omKJwy09po.* Attendees register once and can attend one or both meeting events. After registering, you will receive a confirmation email containing information about joining the meeting.

Comments: Public comments can be emailed to the DFO at *Jennifer.davis@bie.edu*; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th Floor, Suite 250, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N Central Ave., 12th Floor, Suite 250, Phoenix, AZ 85004, *Jennifer.Davis@bie.edu,* or mobile phone (202) 860–7845.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. Ch. 10), the BIE is announcing the Advisory Board will hold its next meeting in-person and online. The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. All meetings, including virtual sessions, are open to the public in their entirety.

Meeting Agenda Items

The following agenda items will be for the April 25, 2024, and April 26, 2024, meetings. The reports concern special education topics.

- The BIE's Division of Performance and Accountability will provide updates about the BIE FFY 2022 State Performance Plan/Annual Performance Report (SPP/APR); the BIE Special Education Policy & Procedures Handbook; the SY 2023–2024 Fiscal and Programmatic monitoring activities; the SY 2023–2024 Transition activities; and the Indian Health Services Memorandum of Understanding.
- Updates about the BIE's Native American Student Information System (NASIS).
- Provide an overview about Indian School Equalization Program (ISEP) Training (part 39, Authority: 25 U.S.C. 13, 2008; Pub. L. 107–110, 115 Stat. 1425).
- Provide an overview about the Federal Fiscal Grants Management/IDEA part B Awards, focusing on ISEP and IDEA programs and activities, and what are allowable costs and how to determine allowable costs?
- Provide an overview about section 504 of the Rehabilitation Act of 1973
- Provide information about the Education for Parents of Indian Children with Special Needs, (EPICS) Program.
- The Advisory Board will also have work sessions to address the next meeting logistics, discuss next steps, provide recommendations for future projects or meetings, wrap-up important decisions, discuss outstanding tasks, and share working folder with board members for future meetings.
- Four Public Comment Sessions will be provided during both meeting days.

○ On Thursday, April 25, 2024, two sessions (15 minutes each) will be provided, 10:45 a.m. to 11:00 a.m. MST and 2:30 p.m. to 2:45 p.m. MST. Public comments can be provided verbally via webinar or in writing using the chat box.

○ On Friday, April 26, 2024, two sessions (15 minutes each) will be provided, 9:45 a.m. to 10:00 a.m. MST and 11:15 a.m. to 11:30 a.m. MST. Public comments can be provided verbally via webinar or in writing using the chat box.

○ Public comments can also be emailed to the DFO at *Jennifer.Davis@bie.edu*; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave. 12th Floor, Suite 250, Phoenix, Arizona 85004.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Accessibility Request

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the person listed in the section titled For Further Information Contact at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Authority: 5 U.S.C. Ch. 10.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–06466 Filed 3–26–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500173980, AZAZ105857840]

Public Land Order No. 7938; Withdrawal of Public Land for Land Management Evaluation Purposes, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 20,982.981 acres of public land from settlement, sale, location, or entry under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws; and 800 acres of Federal surface lands from settlement, sale, location, or entry under the public land laws, for 5 years for land management evaluation purposes, subject to valid existing rights. The withdrawn land is located in La Paz and Yuma Counties, Arizona.

DATES: This Public Land Order takes effect on March 27, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office 1 North Central Avenue, Suite 800 Phoenix, AZ 85004, telephone: (602) 417–9561, email at *mouellett@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose of this withdrawal is to maintain the current environmental baseline, subject to valid existing rights, to allow the Bureau of Land Management and the Department of the Army time to complete land management evaluations. The evaluation of the lands identified as the Highway 95 Addition is for a potential legislative withdrawal for support of the Yuma Proving Ground, pending processing of the Army's application (87 FR 19526) for withdrawal of public lands for defense purposes under the Engle Act.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws, to maintain current environmental baseline conditions.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 19 W.,
Sec. 4, lots 2 thru 4, lots 6, 7, 9, and 10, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 5 and 8;
Sec. 9, lots 2, 3, 5, and 6, W½NE¼, W½, and W½SE¼;
Secs. 17 and 20;
Sec. 21, lots 2, 3, 5, and 6, W½NE¼, W½, and W½SE¼;
Sec. 28, lots 2, 3, 5, and 6, W½NE¼, W½, and W½SE¼;
Sec. 29;
Sec. 33, lots 2, 3, 5, and 6, W½NE¼, W½, and W½SE¼.
T. 2 N., R. 19 W.,
Sec. 33, lot 1, S½SW¼, and SW¼SE¼.
T. 1 S., R. 19 W.,
Secs. 4 thru 9 and secs. 16 thru 21;
Sec. 28, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
Secs. 29 thru 32;
Sec. 33, lots 2, 3, 6 and 7, NW¼NE¼, NW¼, NE¼SW¼, and W½SW¼.
T. 2 S., R. 19 W.,
Sec. 4, lots 4, 6, 7, and 10;
Secs. 5 thru 7;
Sec. 8, lots 1, 2, 5, 7, 9, 12, W½NE¼, W½, NW¼NW¼SE¼, W½SW¼NW¼SE¼, and SE¼SW¼NW¼SE¼;
Sec. 9, lot 2;
Sec. 17, lots 2, 3, 4, 7, and W½NW¼;
Sec. 18;
Sec. 19, lots 1 thru 4, NW¼NE¼, and E½NW¼;
Sec. 30, lot 1.

The area described contains 20,982.981 acres, according to the official plats of the surveys of the said land, on file with the BLM.

2. Subject to valid existing rights, the following described Federal surface lands are hereby withdrawn from settlement, sale, location, or entry under the public land laws, to maintain current environmental baseline conditions:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 19 W.,
Sec. 32.
T. 2 N., R. 19 W.,
Sec. 32, S½SW½ and S½SE½.

The areas described aggregate 800 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

3. This withdrawal will expire 5 years from the effective date of this order, unless, as a result of a review conducted pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

Robert T. Anderson,

Solicitor.

[FR Doc. 2024–06483 Filed 3–26–24; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37662; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before March 16, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 11, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 16, 2024. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other

personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

KANSAS

Brown County

Guild, William and Augusta, House, 610 Miami Street, Hiawatha, SG100010232

KENTUCKY

Jefferson County

Jefferson County Fiscal Court Building, 531 Court Place, Louisville, SG100010228

OHIO

Belmont County

Stratton Flour Mill, 110 Mill Road, Flushing, SG100010231

Hamilton County

Potter's Field—West Price Hill, 4700 Guerley Road, Cincinnati, SG100010226

TEXAS

Montgomery County

Montgomery County Hospital, 301 S 1st Street, Conroe, SG100010230

A request to move has been received for the following resource(s):

ILLINOIS

Calhoun County

Kamp Store, Jct. of Oak and Broadway, NE corner, Kampsville, MV94000027

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–06435 Filed 3–26–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1334]

Certain Raised Garden Beds and Components Thereof; Notice of a Commission Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue a limited exclusion order (''LEO'') prohibiting the importation into the United States and the sale of certain raised garden beds and components thereof by respondents Huizhou Green Giant Technology Co., Ltd. (''Green Giant'') of Guangdong, China; and Utopban Limited (''Utopban'') of Hong Kong, China. The Commission has also determined to issue a cease and desist order (''CDO'') directed to respondent Utopban. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 19, 2022, based on an amended complaint (the ''Complaint'') filed by Vego Garden, Inc. of Houston, Texas (the ''Complainant'' or ''Vego Garden''). 87 FR 63527–28 (Oct. 19, 2022). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, and in the sale of, certain raised garden beds and components thereof by reason of misappropriation of trade secrets and unfair competition, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* at 63527.

The Commission's notice of investigation named five respondents, and the name of one of the respondents was corrected pursuant to an amendment to the complaint. *See* 88 FR 2637–38 (Jan. 17, 2023). The five named respondents, as amended, are: Huizhou Green Giant Technology Co., Ltd. (''Green Giant'') of Guangdong, China; Utopban International Trading Co., Ltd. d/b/a Vegega (''Utopban International'') of Rosemead, California; Utopban Limited (''Utopban'') of Hong Kong, China; Forever Garden of El Monte, California; and VegHerb, LLC d/b/a Frame It All (''VegHerb'') of Cary, North Carolina. *See id.* at 2638. The Office of Unfair Import Investigations (''OUII'') is also a party in this investigation. *Id.*

The investigation was terminated as to Utopban International based on withdrawal of the complaint's allegations. Order No. 9 (Jan. 30, 2023), *unreviewed by* Comm'n Notice (Feb. 27, 2023). The investigation was terminated as to Forever Garden and VegHerb based on settlement agreements. Order No. 11 (Feb. 23, 2023) (VegHerb) and Order No. 12 (Feb. 23, 2023) (Forever Garden), *both unreviewed by* Comm'n Notice (Mar. 23, 2023).

An evidentiary hearing was held on May 22–25, 2023, and the ALJ issued a final initial determination (''ID'') on September 8, 2023, finding a violation of section 337 by reason of misappropriation of trade secrets and unfair competition based on false advertising under the Lanham Act. Together with the ID, the ALJ also issued a recommended determination (''RD'') recommending the issuance of an LEO for Green Giant and Utopban and a CDO for Utopban. The RD further recommended that a 100% bond be set during the Presidential review period.

On September 12, 2023, the Commission issued a notice requesting submissions on the public interest. *See* 88 FR 63617–18 (Sept. 15, 2023). On October 10, 2023, Vego Garden filed a statement on the public interest. No other public interest submissions were filed.

Respondents Green Giant and Utopban filed a petition for review of the ID on September 20, 2023. Complainant Vego Garden filed a response in opposition to the petition on September 28, 2023. OUII filed a response in opposition to the petition on October 2, 2023.

On November 7, 2023, the Commission extended the date for determining whether to review the ID

from November 9, 2023, to January 9, 2024, and the Commission extended the target date for completion of this investigation from January 8, 2024, to March 11, 2024. *See* Comm'n Notice (Nov. 7, 2023).

On January 9, 2024, the Commission issued a notice of its determination to review the ID in part. *See* 89 FR 2645–47 (Jan. 16, 2024). Specifically, the Commission determined to review the ID's findings with respect to: (1) the Commission's statutory authority to investigate unfair acts under section 337(a)(1)(A) involving extraterritorial conduct, including the alleged trade secret misappropriation and false advertising under the Lanham Act; (2) the ID's findings of trade secret misappropriation with respect to the Product Development Research Trade Secret and Product Manufacturing Trade Secret; and (3) all of the ID's findings with respect to domestic industry (*i.e.,* the existence of a domestic industry and injury to the domestic industry) (ID at 103–136). *Id.* at 2646. The Commission determined not to review the ID's determinations with respect to the Product Materials Research Trade Secret and the false advertising claim. The Commission also requested additional briefing from the parties with respect to certain issues under review and requested submissions from the parties, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding. *Id.* at 2646–47.

On January 23, 2024, Complainant Vego Garden, Respondents Green Giant and Utopban, and OUII each filed submissions in response to the Commission's notice. On January 30, 2024, each of the parties filed reply submissions.

On February 28, 2024, the Commission extended the target date for completion of this investigation to March 18, 2024. *See* Comm'n Notice (Mar. 12, 2024). On March 15, 2024, the Commission extended the target date for completion of this investigation to March 21, 2024. *See* Comm'n Notice (Mar. 15, 2024).

Having examined the record in this investigation, including the ID, the RD, the petition for review and responses thereto, and the parties' submissions on review, the Commission has determined to affirm-in-part and reverse-in-part the ID. Specifically, as explained in the Commission Opinion issued concurrently herewith, the Commission has determined to affirm with modifications the ID's determination that the Commission has statutory authority to investigate the alleged unfair methods of competition and unfair acts; reverse the ID's determination that the Product Development Research Trade Secret was misappropriated; affirm with modifications the ID's determination that the Product Manufacturing Trade Secret was misappropriated; and affirm with modifications the ID's determination that the domestic industry requirement was satisfied. All findings in the ID that are not inconsistent with the Commission's determination are affirmed and adopted by the Commission. Accordingly, the Commission finds that there is a violation of section 337 by Respondents Green Giant and Utopban with respect to misappropriation of Vego Garden's Product Manufacturing Trade Secret; and by Utopban with respect to false advertising.

The Commission has determined that the appropriate form of relief is an LEO and a CDO. The LEO prohibits (1) the unlicensed entry of raised metal garden beds that are manufactured using Vego Garden's Product Manufacturing Trade Secret and are manufactured, imported, or sold by or on behalf of Green Giant and/or Utopban for a duration of one year; and (2) the unlicensed entry of raised metal garden beds that are falsely advertised using photographs of Vego Garden's products that are imported or sold by or on behalf of Utopban. The CDO prohibits (1) the unlicensed importation, sale, and marketing in the United States by Utopban of raised metal garden beds that are manufactured using Vego Garden's Product Manufacturing Trade Secret for a duration of one year; and (2) the unlicensed importation, sale, and marketing in the United States by Utopban of raised metal garden beds that are falsely advertised using photographs of Vego Garden's products.

The Commission has determined that the public interest factors enumerated in subsections (d)(1) and (f)(1) of section 337 do not preclude the issuance of the remedial orders. The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be set in the amount of one hundred percent (100%) of the entered value of the imported articles that are subject to the LEO. The Commission's remedial orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated.

The Commission vote for this determination took place on March 21, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 21, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–06465 Filed 3–26–24; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed teleconference meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 18, 2024, from 10 a.m. to 5 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will hold a teleconference meeting on April 18, 2024, from 10 a.m. to 5 p.m. (EDT). The meeting will be closed to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. 1009, that the subject of the meeting falls within the exception to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 21, 2024.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2024–06443 Filed 3–26–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Honoring Investments in Recruiting and Employing American Veterans Medallion Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Veterans' Employment and Training Service (VETS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 26, 2024.

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: Wilson Vadukumcherry by telephone at 202–693–0110, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The information collections under OMB Control No. 1293–0015 requires the Department to solicit voluntary applications from employers for an award called the HIRE Vets Medallion Award. These awards are intended to recognize employer efforts to recruit, employ, and retain the Nation's veterans. All employers who employ at least one employee are eligible to apply for the Award. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 19, 2024 (89 FR 3697).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–VETS.

Title of Collection: Honoring Investments in Recruiting and Employing American Veterans Medallion Program.

OMB Control Number: 1293–0015.

Affected Public: Private Sector—Businesses or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 1,000.

Total Estimated Number of Responses: 4,500.

Total Estimated Annual Time Burden: 6,730 hours.

Total Estimated Annual Other Costs Burden: $169,500.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Wilson Vadukumcherry,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–06531 Filed 3–26–24; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0005]

Whistleblower Stakeholder Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing a public meeting to solicit comments and suggestions from stakeholders on its outreach and training efforts in support of the whistleblower laws it enforces.

DATES: The public meeting will be held on May 15, 2024, from 1:00 p.m. to 4:00 p.m., ET via Zoom. Persons interested in attending the meeting must register by May 8, 2024. In addition, comments relating to the ''Scope of Meeting'' section of this document must be submitted by May 29, 2024.

ADDRESSES:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking portal. Follow the on-line instructions for submissions. All comments should be identified with Docket No. OSHA–2018–0005.

Registration to Attend and/or to Participate in the Meeting: If you wish to attend the public meeting, make an oral presentation at the meeting, or participate in the meeting, you must register using this link: *https://www.eventbrite.com/e/whistleblower-stakeholder-meeting-tickets-714615372817* or this link for registration in Spanish *https://www.eventbrite.com/e/entradas-reunion-para-partes-interesadas-sobre-los-denunciantes-que-son-trabajadores-714854086817* by close of business on May 8, 2024. Each participant will be allowed to speak for up to 5 minutes. There is no fee to register for the public meeting. After reviewing the requests to present, OSHA will contact each participant prior to the meeting to inform them of the speaking order. We will provide Spanish-language translation.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information: Ms. Meghan Smith, Program Analyst, OSHA Directorate of Whistleblower Protection

Programs, U.S. Department of Labor; telephone: (202) 693–2199; email: *osha.dwpp@dol.gov.*

SUPPLEMENTARY INFORMATION:

A. Scope of Meeting

OSHA is interested in obtaining information from the public on key issues facing the agency's whistleblower program. This meeting is part of an ongoing series of meetings requesting public input on this program. The agency is seeking suggestions on how it can improve its outreach and training efforts in the Whistleblower Protection Program. Please note that the agency does not have the authority to change the statutory language and requirements of the laws it enforces. In particular, the agency invites input on the following:

1. How can OSHA deliver better whistleblower customer service?
2. What kind of assistance can OSHA provide to help explain the agency's whistleblower laws to employees and employers?

B. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES** above). Electronic comments include recorded oral comments. Comments may be submitted in any language. To permit time for interested persons to submit data, information, or views on the issues in the ''Scope of Meeting'' section of this notice, please submit comments by May 29, 2024, and include Docket No. OSHA–2018–0005. If you have questions regarding how to submit comments, please contact *osha.dwpp@dol.gov* or 202–693–2199.

C. Access to the Public Record

Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the Directorate of Whistleblower Protection Programs' web page at: *http://www.whistleblowers.gov.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)); Secretary's Order 08–2020 (May 15, 2020).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06514 Filed 3–26–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0016]

Nemko North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for Nemko North America, Inc., as a Nationally Recognized Testing Laboratory.

DATES: The expansion of the scope of recognition becomes effective on March 27, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Nemko North America, Inc. (NNA) as a NRTL. NNA's expansion covers the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including NNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

NNA submitted an application on September 20, 2023 (OSHA–2013–0016–0022), to expand the recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing NNA's expansion application in the **Federal Register** on February 7, 2024 (89 FR 8451). The agency requested comments by February 22, 2024, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion to NNA's NRTL scope of recognition.

Docket No. OSHA–2013–0016 contains all materials in the record concerning NNA's recognition. To obtain or review copies of all public documents pertaining to NNA's expansion application, go to *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined NNA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that NNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant NNA's expanded scope of recognition. OSHA limits the expansion

of NNA's recognition to testing and certification of products for demonstration of conformance to the test standard listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN NNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 508A ..	Industrial Control Panels.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including, but not limited to, abiding by the following conditions of the recognition:

1. NNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. NNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. NNA must continue to meet the requirements for recognition, including all previously published conditions on NNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of NNA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06516 Filed 3–26–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2024–0003]

Ballard Marine Construction Lower Olentangy Tunnel Project; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Ballard Marine Construction for a permanent variance and interim order from provisions of the standard that regulates construction work in compressed air environments, presents the agency's preliminary finding on Ballard's application, and announces the granting of an interim order. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this application.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before April 26, 2024. The interim order described in this notice will become effective on March 27, 2024, and shall remain in effect until the completion of the Lower Olentangy Tunnel Conveyance Project in Columbus, Ohio, the interim order is modified or revoked, or OSHA publishes a decision on the permanent variance application.

ADDRESSES:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2024–0003). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before April 26, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1911; email: *robinson.kevin@dol.gov.*

Copies of this ***Federal Register*** *notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

Hearing Requests. According to 29 CFR 1905.15, hearing requests must include: (1) a concise statement of facts detailing how the permanent variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

On April 11, 2023, Ballard Marine Construction (Ballard or the applicant), submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655, and 29 CFR 1905.11 (variances and other relief under Section 6(d)) an application for a permanent variance from several provisions of the OSHA standard that regulates work in compressed air, 1926.803 of 1926 Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air, and an interim order allowing it to proceed while OSHA considers the request for a permanent variance (OSHA–2024–0003–0002). This notice addresses Ballard's application for a permanent variance and interim order for construction of the Lower Olentangy Tunnel Project in Columbus, Ohio only and is not applicable to future Ballard tunneling projects.

Specifically, this notice addresses Ballard's application for a permanent variance and interim order from the provisions of the standard that: (1) require the use of the decompression values specified in decompression tables in appendix A of subpart S (29 CFR 1926.803(f)(1)); and (2) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and (xvii), respectively).

OSHA has previously approved nearly identical provisions when granting several other very similar variances, as discussed in more detail in Section II. OSHA preliminarily concludes that the proposed variance is appropriate, grants an interim order temporarily allowing the proposed activity, and seeks comment on the proposed variance.

Background

The applicant is a contractor that works on complex tunnel projects using innovations in tunnel-excavation methods. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balanced micro-tunnel boring machine (TBM). Using shielded mechanical excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, TBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies and isolate that pressure to the forward section (the excavation working chamber) of the TBM.

Ballard asserts that it bores tunnels using TBM at levels below the water table through soft soils consisting of clay, silt and sand. TBMs are capable of maintaining pressure at the tunnel face and stabilizing existing geological conditions through the controlled use of a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. The forward-most portion of the TBM is the working chamber, and this chamber is the only pressurized segment of the TBM. Within the shield, the working chamber consists of two sections: the forward working chamber and the staging chamber. The forward working chamber is immediately behind the cutter head and tunnel face. The staging chamber is behind the forward working chamber and between the man-lock door and the entry door to the forward working chamber.

The TBM has twin man-locks located between the pressurized working chamber and the non-pressurized portion of the machine. Each man-lock has two compartments. This configuration allows workers to access the man-locks for compression and decompression, and medical personnel to access the man-locks if required in an emergency.

Ballard's Hyperbaric Operations Manual (HOM) for the Lower Olentangy Conveyance Tunnel Project (OSHA–2024–0003–0003) indicates that the maximum pressure to which it is likely to expose workers during project interventions for the three tunnel drives is 27 pounds per square inch gauge (p.s.i.g). The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face, which for this project Ballard estimates will be up to a pressure not exceeding 27 p.s.i.g., which does not exceed the maximum pressure specified by the OSHA standard at 29 CFR 1926.803(e)(5). [1] Ballard is not seeking a variance from this provision of the compressed-air standard.

Ballard employs specially trained personnel for the construction of the tunnel. To keep the machinery working effectively, Ballard asserts that these workers must periodically enter the excavation working chamber of the TBM to perform hyperbaric interventions during which workers would be exposed to air pressures up to 27 p.s.i.g. These interventions consist of conducting inspections or maintenance work on the cutter-head structure and cutting tools of the TBM, such as changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head. These interventions are the only time that workers are exposed to compressed air. Interventions in the excavation working chamber (the pressurized portion of the TBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention.

During interventions, workers enter the working chamber through one of the twin man-locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The man-locks and the excavation working chamber are designed to accommodate three people, which is the maximum crew size allowed under the proposed variance (Ballard only plans to employ a crew of two people for these activities). When the required decompression times are greater than work times, the twin man-locks allow for crew rotation. During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man-lock at its disposal.

Ballard asserts that these innovations in tunnel excavation have greatly reduced worker exposure to hazards of pressurized air work because they have eliminated the need to pressurize the entire tunnel for the project and thereby reduce the number of workers exposed, as well as the total duration of exposure, to hyperbaric pressure during tunnel construction. These advances in technology substantially modified the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the OSHA compressed-air standard for construction at 29 CFR 1926.803.

In addition to the reduced exposures resulting from the innovations in tunnel-excavation methods, Ballard asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. These procedures, however, would deviate from the decompression process that OSHA requires for construction in 29 CFR 1926.803(f)(1) and the decompression tables in Appendix A of 29 CFR part 1926, subpart S. Nevertheless, according to Ballard, their use of decompression protocols incorporating oxygen is more efficient,

[1] The decompression tables in Appendix A of subpart S express the working pressures as pounds per square inch gauge (p.s.i.g.). Therefore, throughout this notice, OSHA expresses the p.s.i. value specified by 29 CFR 1926.803(e)(5) as p.s.i.g., consistent with the terminology in appendix A, Table 1 of subpart S.

effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard.

Ballard therefore believes its workers will be at least as safe under its proposed alternatives as they would be under OSHA's standard because of the reduction in number of workers and duration of hyperbaric exposures, better application of hyperbaric medicine, and the development of a project-specific HOM that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric or compressed-air workers (CAWs).

Based on an initial review of Ballard's application for a permanent variance and interim order for the construction of the Lower Olentangy Tunnel Project in Columbus, Ohio, OSHA has preliminarily determined that Ballard has proposed an alternative that would provide a workplace at least as safe and healthful as that provided by the standard.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations (29 CFR part 1905), the applicant has certified that it notified its workers [2] of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed its workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

A. OSHA History of Approval of Nearly Identical Variance Requests

OSHA previously approved several nearly identical variances involving the same types of tunneling equipment used for similar projects. OSHA notes that it granted several subaqueous tunnel construction permanent variances from the same provisions of OSHA's compressed-air standard (29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application: (1) Impregilo, Healy, Parsons, Joint Venture (IHP JV) for the completion of the Anacostia River Tunnel in Washington, DC (80 FR 50652 (August 20, 2015)); (2) Traylor JV for the completion of the Blue Plains Tunnel in Washington, DC (80 FR 16440, March 27, 2015)); (3) Tully/OHL USA Joint Venture for the completion of the New York Economic Development Corporation's New York Siphon Tunnel project (79 FR 29809, May 23, 2014)); (4) Salini-Impregilo/Healy Joint Venture for the completion of the Northeast Boundary Tunnel in Washington, DC (85 FR 27767, May 11, 2020); (5) Traylor-Shea Joint Venture for the completion of the Alexandria RiverRenew Tunnel Project in Alexandria, Virginia and Washington, DC (87 FR 54536, September 6, 2022); (6) McNally/Kiewit Joint Venture for the completion of the Shoreline Storage Tunnel Project in Cleveland, Ohio (87 FR 58379, September 25, 2022) and (7) Traylor-Sundt Joint Venture for the Integrated Pipeline Tunnel Project in Dallas Texas, (88 FR 26600, May 1, 2023). OSHA also granted two interim orders to Ballard Marine Construction for the Suffolk County Outfall Tunnel Project in West Babylon, New York (86 FR 5253, January 19, 2021) and Ballard Marine Construction for the Bay Park Conveyance Tunnel Project in Nassau, New York (88 FR 51862; August 4, 2023). The proposed alternate conditions in this notice are nearly identical to the alternate conditions of the previous permanent variances and interim orders.[3] OSHA is not aware of any injuries or other safety issues that arose from work performed under these conditions in accordance with the previous variances and interim orders.

B. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression according to the decompression tables in Appendix A of 29 CFR part 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules (the 1992 French Decompression Tables), which rely on staged decompression, and to supplement breathing air used during decompression with air or oxygen (as appropriate).[4] The applicant asserts decompression protocols using the 1992 French Decompression Tables for air or oxygen as specified by the Lower Olentangy Conveyance Tunnel Project HOM are safer for tunnel workers than the decompression protocols specified in appendix A of 29 CFR part 1926, subpart S. Accordingly, the applicant would commit to following the decompression procedures described in its HOM, which would require it to follow the 1992 French Decompression Tables to decompress compressed-air workers (CAWs) after they exit the hyperbaric conditions in the excavation working chamber.

Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen. Ballard asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) maintaining appropriate levels of external pressure to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of nitrogen elimination; (4) improving the quality of breathing during decompression stops to diminish worker fatigue and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the project-specific HOM requires a physician certified in hyperbaric medicine, to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced man-lock attendant is also required to be present during hyperbaric exposures and decompression. This man-lock attendant is to operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor, who is trained in hyperbaric operations, procedures, and safety, directly oversees all hyperbaric interventions and ensures that staff follow the procedures delineated in the HOM or by the attending physician.

C. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

The applicant is applying for a permanent variance from the OSHA

[2] See the definition of ''Affected employee or worker'' in section VI. D.

[3] Most of the other subaqueous tunnel construction variances allowed further deviation from OSHA standards by permitting employee exposures above 50 p.s.i.g. based on the composition of the soil and the amount of water above the tunnel for various sections of those projects. The current proposed variance includes substantively the same safeguards as the variances that OSHA granted previously, even though employees will only be exposed to pressures up to 27 p.s.i.g.

[4] In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is committed to conducting the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

Breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in decompression illness (DCI), commonly referred to as ''the bends.'' This description of the etiology of DCI is consistent with current scientific theory and research on the issue.

The 1992 French Decompression Tables proposed for use by the applicant provide for stops during worker decompression (*i.e.,* staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the use of automatically regulated continuous decompression.[5]

In addition, the applicant asserts that staged decompression administered in accordance with its HOM is at least as effective as an automatic controller in regulating the decompression process because the HOM includes an intervention supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) who directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops.

D. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

Space limitations in the TBM do not allow for the installation and use of an additional special decompression lock or chamber. The applicant proposes that it be permitted to rely on the man-locks and staging chamber in lieu of adding a separate, special decompression chamber. Because only a few workers out of the entire crew are exposed to hyperbaric pressure, the man-locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate all of the exposed workers during decompression. The applicant uses the existing man-locks, each of which adequately accommodates a three-member crew for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man-lock (during decompression stops) or exit the man-lock and move into the staging chamber where additional space is available. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives, OSHA has preliminarily determined that the applicant's proposed alternatives on the whole, subject to the conditions in the request and imposed by this interim order, provide measures that are as safe and healthful as those required by the cited OSHA standard addressed in section II of this document.

In addition, OSHA has preliminarily determined that each of the following alternatives are at least as effective as the specified OSHA requirements:

29 CFR 1926.803(f)(1)

Ballard has proposed to implement equally effective alternative measures to the requirement in 29 CFR 1926.803(f)(1) for compliance with OSHA's decompression tables. The project-specific HOM specifies the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use (the 1992 French Decompression Tables). Depending on the maximum working pressure and exposure times during the interventions, these tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.,* staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant, experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

Prior to granting the several previous permanent variances to IHP JV, Traylor JV, Tully JV, Salini-Impregilo Joint Venture, Traylor-Shea JV and McNally/Kiewit JV, Traylor-Sundt JV, Ballard Suffolk (Interim Order, January 19, 2021), and Ballard Bay Park (Interim Order, August 4, 2023), OSHA conducted a review of the scientific literature and concluded that the

[5] See, *e.g.,* Eric Kindwall, *Compressed Air Tunneling and Caisson Work Decompression Procedures: Development, Problems, and Solutions,* 24(4) Undersea and Hyperbaric Medicine 337, 337–45 (1997). This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard. Dr. Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, ''Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1h, at least half the time is spent at pressures less than 2 p.s.i.g. . . . ., which provides less and less meaningful bubble suppression . . . .'' In addition, Dr. Kindwall addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that ''[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control.''

alternative decompression method (*i.e.,* the 1992 French Decompression Tables) Ballard proposed would be at least as safe as the decompression tables specified by OSHA when applied by trained medical personnel under the conditions that would be imposed by the proposed variance.

Some of the literature indicates that the alternative decompression method may be safer, concluding that decompression performed in accordance with these tables resulted in a lower occurrence of DCI than decompression conducted in accordance with the decompression tables specified by the standard. For example, H. L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996).[6] This project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 DCI cases out of 7,220 decompression events and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08% compared to a previous incidence rate of 0.14%. The DCI incidence in the study by H. L. Anderson is substantially less than the DCI incidence reported for the decompression tables specified in appendix A.

OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables.[7]

OSHA's experience with the previous several variances, which all incorporated nearly identical decompression plans and did not result in safety issues, also provides evidence that the alternative procedure as a whole is at least as effective for this type of tunneling project as compliance with OSHA's decompression tables. The experience of State Plans[8] that either granted variances (Nevada, Oregon and Washington)[9] for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, provide additional evidence of the effectiveness of this alternative procedure.

29 CFR 1926.803(g)(1)(iii)

Ballard developed, and proposed to implement, an equally effective alternative to 29 CFR 1926.803(g)(1)(iii), which requires the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The applicant's alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine, to oversee all hyperbaric operations.

In reaching this preliminary conclusion, OSHA again notes the experience of previous, nearly identical approved tunneling variances, the experiences of State Plans, and a review of the literature and other information noted earlier.

29 CFR 1926.803(g)(1)(xvii)

Ballard developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by 29 CFR 1926.803(g)(1)(xvii). The TBM's man-lock and working chamber appear to satisfy all of the conditions of the special decompression chamber, including that they provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes. Therefore, again noting OSHA's previous experience with nearly identical variances including the same alternative, OSHA preliminarily determined that the TBM's man-lock and working chamber function as effectively as the special decompression chamber required by the standard.

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the agency preliminarily finds that when the employer complies with the conditions of the proposed variance, the working conditions of the employer's workers would be at least as safe and healthful as if the employer complied with the working conditions specified by paragraphs (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the preliminary decision to grant an interim order allowing Ballard's CAWs to perform interventions in hyperbaric conditions not exceeding 27 p.s.i.g. during the Lower Olentangy Tunnel Project, subject to the conditions that follow in this document. This interim order will remain in effect until completion of the Lower Olentangy Tunnel Project or until the agency modifies or revokes the interim order or makes a decision on Ballard's application for a permanent variance. During the period starting with the publication of this notice until completion of the Lower Olentangy Tunnel Project, or until the agency modifies or revokes the interim order or makes a decision on its application for a permanent variance, the applicant is required to comply fully with the conditions of the interim order as an alternative to complying with the following requirements of 29 CFR 1926.803 (''the standard'') that:

1. Require the use of decompression values specified by the decompression tables in Appendix A of the compressed-air standard (29 CFR 1926.803(f)(1));
2. Require the use of automated operational controls (29 CFR 1926.803(g)(1)(iii)); and
3. Require the use of a special decompression chamber (29 CFR 1926.803(g)(1)(xvii)).

In order to avail itself of the interim order, Ballard must: (1) comply with the conditions listed in the interim order for the period starting with the grant of the interim order and ending with Ballard's completion of the Lower Olentangy Tunnel Project (or until the agency modifies or revokes the interim order or makes a decision on its application for a permanent variance); (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of its application for a permanent variance.

OSHA is also proposing that the same requirements (see above section III,) would apply to a permanent variance if

[6] Anderson H.L. (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. *Undersea and Hyberbaric Medicine,* 29(3), pp. 172–188.

[7] J.C. Le Péchon, P. Barre, J.P. Baud, F. Ollivier, *Compressed Air Work—French Tables 1992—Operational Results,* JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS, pp. 1–5 (September 1996) (see Ex. OSHA–2012–0036–0005).

[8] Under Section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as ''State Plans.'' Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. See 29 U.S.C. 667.

[9] These state variances are available in the docket for the 2015 Traylor JV variance: Exs. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0005 (Oregon), and OSHA–2012–0035–0004 (Washington).

OSHA ultimately issues one for this project. OSHA requests comment on those conditions as well as OSHA's preliminary determination that the specified alternatives and conditions would provide a workplace as safe and healthful as those required by the standard from which a variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Description of the Specified Conditions of the Interim Order and the Application for a Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii) and provides additional detail regarding the proposed conditions that form the basis of Ballard's application for an Interim Order and for a Permanent Variance. The conditions are listed below. For brevity, the discussion that follows refers only to the permanent variance, but the same conditions apply to the Interim Order.

Proposed Condition A: Scope

The scope of the proposed permanent variance would limit coverage to the work situations specified. Clearly defining the scope of the proposed permanent variance provides Ballard, Ballard's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that Ballard exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers) [10] may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, if OSHA were to grant a permanent variance, it would apply to only the applicant, Ballard Marine Construction, and only to the Lower Olentangy Tunnel Project. As a result, it is important to understand that if OSHA were to grant Ballard a Permanent Variance, it would not apply to any other employers, or to projects the applicant may undertake in the future.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the Order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance as the remainder of the Lower Olentangy Tunnel Project.

Proposed Condition C: List of Abbreviations

Proposed condition C defines a number of abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: Definitions

The proposed condition defines a series of terms, mostly technical terms, used in the proposed permanent variance to standardize and clarify their meaning. OSHA believes that defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition E: Safety and Health Practices

This proposed condition requires the applicant to develop and submit to OSHA an HOM specific to the Lower Olentangy Tunnel Project at least six months before using the TBM for tunneling operations. The applicant must also submit, at least six months before using the TBM, proof that the TBM's hyperbaric chambers have been designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2019 (or the most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*). These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for the project.

The submission of the HOM to OSHA, which Ballard has already completed, enables OSHA to determine whether the safety and health instructions and measures Ballard specifies are appropriate to the field conditions of the tunnel (including expected geological conditions), conform to the conditions of the variance, and adequately protect the safety and health of the CAWs. It also facilitates OSHA's ability to ensure that the applicant is complying with these instructions and measures. The requirement for proof of compliance with ASME PVHO–1.2019 is intended to ensure that the equipment is structurally sound and capable of performing to protect the safety of the employees exposed to hyperbaric pressure.

Additionally, the proposed condition includes a series of related hazard prevention and control requirements and methods (*e.g.,* decompression tables, job hazard analyses (JHA), operations and inspections checklists, incident investigation, and recording and notification to OSHA of recordable hyperbaric injuries and illnesses) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Proposed Condition F: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during hyperbaric operations. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during TBM operations.

Proposed Condition G: Worker Qualification and Training

This proposed condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The proposed condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work is intended to ensure that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as

[10] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a Variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Paragraph (2)(e) of this proposed condition requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if the workers believe they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Proposed Condition H: Inspections, Tests, and Accident Prevention

Proposed Condition H requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems, and associated work areas. This condition would help to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition would also enhance worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (3) of this proposed condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the TBM, and maintain these documents at the jobsite for the duration of the job. This requirement would provide the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Proposed Condition I: Compression and Decompression

This proposed condition would require the applicant to consult with the designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW and then implement the procedures recommended by the medical consultant. This proposed provision would ensure that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during TBM operations. Accordingly, CAWs requiring acclimation would have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition would prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the TBM.

Proposed Condition J: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, the employer must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA's Form 301 Injury and Illness Incident Report and OSHA's Form 300 Log of Work-Related Injuries and Illnesses. The applicant did not seek a variance from this standard, and therefore Ballard must comply fully with those requirements.

Examples of important information to include on the OSHA's Form 301 Injury and Illness Incident Report (along with the corresponding question on the form) are:

Q14

- the task performed;
- the composition of the gas mixture (*e.g.,* air or oxygen);
- an estimate of the CAW's workload;
- the maximum working pressure;
- temperature in the work and decompression environments; and
- unusual occurrences, if any, during the task or decompression.

Q15

- time of symptom onset; and
- duration between decompression and onset of symptoms.

Q16

- type and duration of symptoms; and
- a medical summary of the illness or injury.

Q17

- duration of the hyperbaric intervention;
- possible contributing factors; and
- the number of prior interventions completed by the injured or ill CAW; and the pressure to which the CAW was exposed during those interventions.[11]

Proposed Condition J would add additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant would be required to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition K (using OSHA's Form 301 Injury and Illness Incident Report to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8–.12), would enable the applicant and OSHA to assess the effectiveness of the Permanent Variance in preventing DCI and other hyperbaric-related effects.

Proposed Condition K: Notifications

Under the proposed condition, the applicant is required, within specified periods of time, to: (1) notify OSHA of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during TBM operations; (2) provide OSHA a copy of the hyperbaric exposures incident investigation report (using OSHA's Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA's Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Columbus Ohio OSHA Area Office (COAO) within 15 working days should the applicant need to revise the HOM to accommodate changes in its compressed-air operations that affect Ballard's ability to comply with the conditions of the proposed Permanent Variance; and (6) provide OTPCA and the COAO, at the end of the project, with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA's Form 301 Injury and Illness Incident Report) is more restrictive than the existing recordkeeping requirement of completing OSHA's Form 301 Injury and Illness Incident Report within 7 calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to

[11] See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions *https://www.osha.gov/recordkeeping/forms.*

intervention-related hyperbaric (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, its employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and, based on this assessment, whether to revise or revoke the conditions of the proposed permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

VI. Specific Conditions of the Interim Order and the Proposed Permanent Variance

The following conditions apply to the interim order OSHA is granting to Ballard for the Lower Olentangy Tunnel Project. These conditions specify the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii). In addition, these conditions are specific to the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii) that OSHA is proposing for Ballard's permanent variance. To simplify the presentation of the conditions, OSHA generally refers only to the conditions of the proposed permanent variance, but the same conditions apply to the interim order except where otherwise noted.[12]

The conditions would apply with respect to all employees of Ballard exposed to hyperbaric conditions. These conditions are outlined in this Section:

A. Scope

The interim order applies, and the permanent variance would apply, only when Ballard stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform an intervention (*i.e.,* inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

The interim order and proposed permanent variance apply only to work:

1. That occurs in conjunction with construction of the Lower Olentangy Tunnel Project, a tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of an TBM;
2. In the TBM's forward section (the excavation working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber; and
3. Performed in compliance with all applicable provisions of 29 CFR part 1926 except for the requirements specified by 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii).

B. Duration

The interim order granted to Ballard will remain in effect until OSHA modifies or revokes this interim order or grants Ballard's request for a permanent variance in accordance with 29 CFR 1905.13. The proposed permanent variance, if granted, would remain in effect until the completion of Ballard's Lower Olentangy Tunnel Project.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. COAO—Columbus Ohio Area Office
4. DCI—Decompression illness
5. DMT—Diver medical technician
6. TBM—Earth pressure balanced micro-tunnel boring machine
7. HOM—Hyperbaric operations manual
8. JHA—Job hazard analysis
9. OSHA—Occupational Safety and Health Administration
10. OTPCA—Office of Technical Programs and Coordination Activities

D. Definitions

The following definitions would apply to this proposed permanent variance. These definitions would supplement the definitions in Ballard's project-specific HOM.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Atmospheric pressure*—the pressure of air at sea level, generally 14.7 pounds per square inch absolute (p.s.i.a)., 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures not exceeding 27 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.[13]

5. *Decompression illness*—an illness (also called decompression sickness or ''the bends'') caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include, but are not limited to: joint pain (also known as the ''bends'' for agonizing pain or the ''niggles'' for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a marbling of the skin, which appears pinkish in color in lighter skin and lacy dark brown or purplish color in darker skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas

[12] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a Permanent Variance (designated as ''Permanent Variance'') but the conditions are mandatory for purposes of the Interim Order.

[13] Adapted from 29 CFR 1926.32(f).

embolism (gas bubbles in the arteries that block blood flow).[14]

Note: Health effects associated with hyperbaric intervention, but not considered symptoms of DCI, can include: barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses, and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O_2) at elevated partial pressures).

6. *Diver Medical Technician*—Member of the dive team who is experienced in first aid.

7. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate a tunnel.

8. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.[15]

9. *Hyperbaric*—at a higher pressure than atmospheric pressure.

10. *Hyperbaric intervention*—a term that describes the process of stopping the TBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

11. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by Ballard for working in compressed air during the Lower Olentangy Tunnel Project.

12. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

13. *Man-lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into, or out of, a working chamber.

14. *Medical Advisor*—medical professional experienced in the physical requirements of compressed air work and the treatment of decompression illness.

15. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

16. *p.s.i.a.*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

17. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g. At sea level the gauge pressure is 0 psig.

18. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.[16]

19. *Working chamber*—an enclosed space in the TBM in which CAWs perform interventions, and which is accessible only through a man-lock.

E. Safety and Health Practices

1. Ballard would have to adhere to the project-specific HOM submitted to OSHA as part of the application (see OSHA–2024–0003–0003). The HOM provides the minimum requirements regarding protections from expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. Ballard would have to demonstrate that the TBM on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2019 (or most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*) for the TBM's hyperbaric chambers.

3. Ballard would have to implement the safety and health instructions included in the manufacturer's operations manuals for the TBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

4. Ballard would have to ensure that there are no exposures to pressures greater than 27 p.s.i.g.

5. Ballard would have to ensure that air or oxygen is the only breathing gas in the working chamber.

6. Ballard would have to follow the 1992 French Decompression Tables for air or oxygen decompression as specified in the HOM; specifically, the extracted portions of the 1992 French Decompression tables titled, ''French Regulation Air Standard Tables.''

7. Ballard would have to equip man-locks used by employees with an air or oxygen delivery system, as specified by the HOM, for the project. Ballard would be required not to store in the tunnel any oxygen or other compressed gases used in conjunction with hyperbaric work.

8. Workers performing hot work under hyperbaric conditions would have to use flame-retardant personal protective equipment and clothing.

9. In hyperbaric work areas, Ballard would have to maintain an adequate fire-suppression system approved for hyperbaric work areas.

10. Ballard would have to develop and implement one or more JHA(s) for work in the hyperbaric work areas, and review, periodically and as necessary (*e.g.,* after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs would have to include all the job functions that the risk assessment [17] indicates are essential to prevent injury or illness.

11. Ballard would have to develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by the proposed Permanent Variance and this Interim Order (including all procedures required by the HOM approved by OSHA for the project, which this proposed Permanent Variance would incorporate by reference). The checklists would have to include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

12. Ballard would have to ensure that the safety and health provisions of this project-specific HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.

F. Communication

Ballard would have to:

1. Prior to beginning a shift, implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

[14] See Appendix 10 of ''A Guide to the Work in Compressed-Air Regulations 1996,'' published by the United Kingdom Health and Safety Executive available from NIOSH at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf.*

[15] Also see 29 CFR 1926.1202 for examples of hot work.

[16] Adapted from 29 CFR 1926.32(m).

[17] See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

2. Provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) Use an independent power supply for powered communication systems, and these systems would have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Test communication systems at the start of each shift and as necessary thereafter during each shift to ensure proper operation.

G. Worker Qualifications and Training

Ballard would have to:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction on hyperbaric conditions, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, and document this instruction. The instruction would need to include:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.,* barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression;

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

(f) Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G)(2) of this proposed condition periodically and as necessary (*e.g.,* after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and OSHA's nearest affected Area Office before the training takes place.

H. Inspections, Tests, and Accident Prevention

1. Ballard would have to initiate and maintain a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2), including:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the TBM.

2. Remove any equipment that is found to constitute a safety hazard from service until Ballard corrects the hazardous condition and has the correction approved by a qualified person.

3. Ballard would have to maintain records of all tests and inspections of the TBM, as well as associated corrective actions and repairs, at the job site for the duration of the job.

I. Compression and Decompression

Ballard would have to consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

J. Recordkeeping

In addition to completing OSHA's Form 301 Injury and Illness Incident Report and OSHA's Form 300 Log of Work-Related Injuries and Illnesses, Ballard would have to maintain records of:

1. The date, times (*e.g.,* time compression started, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The names of all supervisors and DMTs involved for each intervention.

3. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

4. The total number of interventions and the amount of hyperbaric work time at each pressure.

5. The results of the post-intervention physical assessment of each CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity, or other health effects associated with work in compressed air for each hyperbaric intervention.

K. Notifications

1. To assist OSHA in administering the conditions specified herein, Ballard would have to:

(a) Notify the OTPCA and the COAO of any recordable injury, illness or fatality (by submitting the completed OSHA Form 301 Injuries and Illness Incident Report) resulting from exposure of an employee to hyperbaric conditions, including those that do not require recompression treatment (*e.g.,* nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification would have to be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident-investigation report would have to include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification to the COAO within 15 working days of the incident that Ballard informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the COAO within 15 working days and in writing, of any change in the compressed-air operations that affects Ballard's ability to comply with the proposed conditions specified herein.

(d) Upon completion of the Lower Olentangy Tunnel Project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the COAO within 90 days.

Note: The evaluation report would have to contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA Form 301 Injuries and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, and relevant medical diagnoses, and treating physicians' opinions); and (4) root causes of any hyperbaric incidents, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the proposed conditions specified herein, inform the OTPCA and the COAO as soon as possible, but no later than seven (7) days, after it has knowledge that it will:

(i) Cease doing business;

(ii) Change the location and address of the main office for managing the tunneling operations specified herein; or

(iii) Transfer the operations specified herein to a successor company.

(f) Notify all affected employees of this permanent variance by the same means required to inform them of its application for the permanent variance.

OSHA would have to approve the transfer of the permanent variance to a successor company through a new application for a modified variance.

VII. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. The agency is issuing this notice pursuant to 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.14(b).

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06532 Filed 3–26–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Intertek Testing Services NA, Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before April 11, 2024.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before April 11, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for expansion of the current recognition as a NRTL. ITSNA requests the addition of four test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA currently has thirty-five facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/its.*

II. General Background on the Application

ITSNA submitted an application dated February 15, 2021 (OSHA–2007–0039–0055), requesting the addition of four test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the appropriate test standards found in ITSNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1973	Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications.
UL 2271	Batteries for Use in Light Electric Vehicle (LEV) Applications.
UL 2524	In-Building 2-Way Emergency Radio Communication Enhancement Systems.
UL 2743	Portable Power Packs.

III. Preliminary Findings on the Application

ITSNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of these four test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0039 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant ITSNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–06515 Filed 3–26–24; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 22–CRB–0006–SD (2021)]

Distribution of Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2021 satellite royalty funds.

DATES: Comments are due on or before April 26, 2024.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/*.

Instructions: All submissions must include a reference to the CRB and docket number 22–CRB–0006–SD (2021). All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 22–CRB–0006–SD (2021).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at (202) 707–7658 or *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: Each year satellite providers must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 119 of the Copyright Act for the retransmission to satellite subscribers of over-the-air television broadcast signals. *See* 17 U.S.C. 119(b). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated agreement among all claiming parties. 17 U.S.C. 119(b)(5)(A), 801(b)(3)(A). If all claimants do not reach an agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 119(b)(5)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to

resolve identified disputes. 17 U.S.C. 119(b)(5)(C), 801(b)(3)(C).

On March 12, 2024, representatives of all the Allocation Phase Parties claimant categories [1] filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution amounting to 40% of the 2021 satellite royalty funds on deposit. That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of the requested amounts of the 2021 satellite royalty funds to the Allocation Phase Parties. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov* and searching for docket number 22–CRB–0006–SD (2021).

Dated: March 22, 2024.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2024–06536 Filed 3–26–24; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 22–CRB–0005–CD (2021)]

Distribution of Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Allocation Phase Parties for partial distribution of 2021 cable royalty funds.

DATES: Comments are due on or before April 26, 2024.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: All submissions must include a reference to the CRB and docket number 22–CRB–0005–CD (2021). All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 22–CRB–0005–CD (2021).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at (202) 707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated agreement among all claiming parties. 17 U.S.C. 111(d)(4)(A), 801(b)(3)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On March 12, 2024, representatives of the Allocation Phase Parties claimant categories [1] filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution of 40% of the 2021 cable royalty funds on deposit. That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of the requested amounts of the 2021 cable royalty funds to the Allocation Phase Parties. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov* and searching for docket number 22–CRB–0005–CD (2021).

Dated: March 22, 2024.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2024–06533 Filed 3–26–24; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321, 50–366, 50–348, 50–364, 50–424, 50–425, 52–025, and 52–026; NRC–2024–0038]

Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Joseph M. Farley Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1, 2, 3, and 4; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making a finding of no significant impact (FONSI) for a proposed issuance of exemptions to

[1] For the purpose of distribution of satellite royalty funds, the Allocation Phase Parties are Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Devotional Claimants, and the Music Claimants, who are comprised of the American Society of Composers, Authors and Publishers, SESAC Performing Rights, LLC, and Broadcast Music, Inc. The Judges have not determined, and do not by this notice determine, the universe of claimant categories for 2021 satellite retransmission royalties.

[1] For the purpose of distribution of cable royalty funds, the Allocation Phase Parties are Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Devotional Claimants, Canadian Claimants Group, National Public Radio, and the Music Claimants, who are comprised of the American Society of Composers, Authors and Publishers, SESAC Performing Rights, LLC, and Broadcast Music, Inc. The Judges have not determined, and do not by this notice determine, the universe of claimant categories for 2021 cable retransmission royalties.

Southern Nuclear Operating Company (SNC, the licensee), for Edwin I. Hatch Nuclear Power Plant (Hatch), Units 1 and 2, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, and Vogtle Electric Generating Plant (Vogtle), Units 1, 2, 3, and 4 (SNC Fleet), located in Appling County, Georgia, Houston County, Alabama, and Burke County, Georgia, respectively. The proposed action would grant the licensee partial exemption from the physical barrier requirements in the NRC's regulations, to allow SNC to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections onsite. The NRC is considering exemptions to Renewed Facility Operating License No. DPR–57, and No. NPF–5, at Hatch, Units 1 and 2, issued on January 15, 2002, Renewed Facility Operating License No. NPF–2, and No. NPF–8, at Farley, Units 1 and 2, issued on May 12, 2005, Renewed Facility Operating License No. NPF–68, and No. NPF–81, at Vogtle, Units 1 and 2, issued on June 3, 2009, and Facility Combined License No. NPF–91, and NPF–92, at Vogtle, Units 3 and 4, issued on February 10, 2012, and held by SNC for the operation of the SNC Fleet.

DATES: The environmental assessment referenced in this document is available on March 27, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0038 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0038. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of partial exemptions, pursuant to section 73.5 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' from the physical barrier requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2, ''Physical barrier,'' paragraph 1, as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. These partial exemptions would be issued to SNC for Hatch, Units 1 and 2, Farley, Units 1 and 2, and Vogtle, Units 1, 2, 3, and 4, in Appling County, Georgia, Houston County, Alabama, and Burke County, Georgia, respectively.

Prior environmental reviews include NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 4—Final Report (ADAMS Package Accession No. ML011590310), regarding Hatch, Units 1 and 2, published in May 2001; NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 18—Final Report (ADAMS Accession No. ML050680297), regarding Farley, Units 1 and 2, published in March 2005; NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 34—Final Report (ADAMS Accession No. ML083380325), regarding Vogtle, Units 1 and 2, published in December 2008; and NUREG–1947, ''Final Supplemental Environmental Impact Statement for Combined License (COLs) for Vogtle Electric Generating Plant Unit 3 and 4'' Final Report (ADAMS Accession No. ML11076A010) published in March 2011.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of the EA and in accordance with 10 CFR 51.31(a), the NRC has prepared a FONSI for the proposed exemption.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would grant the licensee partial exemption from the physical barrier requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2, ''Physical barrier,'' paragraph 1, as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. As stated in 10 CFR 73.2, fences must be constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30 and 45 degrees from the vertical, with an overall height of not less than eight feet, including the barbed topping. If approved, the partial exemption would allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in limited protected area sections on-site, as specified on the maps submitted by the licensee in its exemption application dated July 7, 2023 (ADAMS Accession No. ML23188A163), as supplemented by letters dated February 5 and 12, 2024 (ML24036A292 and ML24043A186, respectively), to meet the regulatory requirements of 10 CFR part 73, ''Physical protection of plants and materials.'' Specifically, barbed wire on top of physical barrier fencing on gates, near gates, near interfaces with buildings, and on corners is oriented vertically.

Need for the Proposed Action

Physical protection consists of a variety of measures to protect nuclear facilities and material against sabotage, theft, diversion, and other malicious acts. The NRC and its licensees use a graded approach for physical protection, consistent with the significance of the facilities or material to be protected. In so doing, the NRC establishes the regulatory requirements and assesses compliance, and licensees are responsible for providing the protection.

Since design criteria in 10 CFR 73.2 require the barbed wire fence toppings to be angled, the proposed action is needed to allow the licensee to continue to use, without modification, the current configuration of vertical barbed wire fence toppings in certain limited protected area sections on-site.

Separate from this EA, the NRC staff is evaluating the licensee's proposed

action, which will be documented in staff evaluation reports for each site. The NRC staff's review will determine whether there is reasonable assurance that the SNC Fleet maintains adequate protection with the current physical barriers in accordance with the requirements in 10 CFR part 73.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental evaluation of the proposed action. The proposed action would grant the licensee partial exemption from the design criteria specified in 10 CFR 73.2, ''Physical barrier,'' paragraph 1, as it applies to the angular specification for brackets used to support the required barbed wire (or similar material) topper. This will allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in certain limited protected area sections at the SNC Fleet sites.

The proposed action would have no direct impacts on land use or water resources. Impacts to terrestrial and aquatic biota would be negligible as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant's National Pollutant Discharge Elimination System permit are needed. In addition, there would be no noticeable effect on air pollutant emissions, socio-economic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Therefore, implementing the proposed action would not result in a change to the radiation exposures to the public or radiation exposure to plant workers.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in the licensee having to replace the vertical barbed wire fence toppings with angled barbed wire that meets the definition of ''Physical barrier'' in 10 CFR 73.2. This could result in temporary, minor changes in vehicular traffic and associated air pollutant emissions due to any construction-related impacts of performing the necessary modifications, but no significant changes in ambient air quality would be expected.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

The NRC staff did not enter into consultation with any other Federal agency or with the States of Georgia and Alabama regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested exemptions from the physical barrier requirement of 10 CFR 73.2, specifically with respect to the design criteria specified in 10 CFR 73.2, ''Physical barrier,'' paragraph 1, to allow the licensee to continue using vertical, rather than angled, barbed wire fence toppings in limited protected area sections on site. The NRC is considering issuing the requested exemption. The proposed action would not have a significant adverse effect on the probability of an accident occurring and would not have any significant radiological and non-radiological impacts. This FONSI incorporates by reference the EA in Section II of this notice. Based on the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated: March 22, 2024.

For the Nuclear Regulatory Commission.

John Lamb,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–06491 Filed 3–26–24; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before May 28, 2024.

ADDRESSES: Comments should be addressed to James Olin, FOIA/Privacy Act Officer. James Olin can be contacted by telephone at 202–692–2507 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin at Peace Corps address above or by phone at (202) 692–2507.

SUPPLEMENTARY INFORMATION:

Title: Campus Ambassadors Onboarding form.

OMB Control Number: 0420–0566.

Type of Request: Re-approve.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 1,000.

b. *Frequency of response:* one time.

c. *Completion time:* 5 minutes.

d. *Annual burden hours:* 83 hours.

General Description of Collection: The information will be used by the Office of University Programs to collect key information including name, mailing address, school and t-shirt sizes to send out a promotional kit and resources to students that have accepted our offer to become a campus ambassador.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on March 22, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024–06481 Filed 3–26–24; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before May 28, 2024.

ADDRESSES: Comments should be addressed to James Olin, FOIA/Privacy Act Officer. James Olin can be contacted by telephone at 202–692–2507 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin at Peace Corps address above or by phone at (202) 692–2507.

SUPPLEMENTARY INFORMATION:

Title: Campus Ambassadors Application.

OMB Control Number: 0420–0565.

Type of Request: Re-approve.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 1,000.

b. *Frequency of response:* one time.

c. *Completion time:* 20 minutes.

d. *Annual burden hours:* 333 hours.

General Description of Collection: The information will be used by the Peace Corps Office of Recruitment and the Office of University Programs to select student campus ambassadors. The application includes questions related to relevant experience as well as requests that students upload a resume. The information requested—general information, questions related to the position and a student's resume—is a standard practice to determine the best candidates for the Campus Ambassador program.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on March 22, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024–06480 Filed 3–26–24; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–210 and CP2024–216; MC2024–211 and CP2024–217]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 29, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–210 and CP2024–216; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 204 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 21, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* March 29, 2024.

2. *Docket No(s).:* MC2024–211 and CP2024–217; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 205 to Competitive Product List and Notice of Filing

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Materials Under Seal; *Filing Acceptance Date:* March 21, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* March 29, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06518 Filed 3–26–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99815; File No. SR–CboeBZX–2024–007]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Definition of Retail Order, and Codify Interpretations and Policies Regarding Permissible Uses of Algorithms by RMOs

March 21, 2024.

On January 25, 2024, Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of retail order, and codify interpretations and policies regarding permissible uses of algorithms by Retail Member Organizations (''RMOs''). The proposed rule change was published for comment in the **Federal Register** on February 13, 2024.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 29, 2024. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 13, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX–2024–007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06445 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99826; File No. SR–MEMX–2024–10]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt a New Cross Asset Tier Rebate

March 21, 2024.

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 14, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on March 1, 2024. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to adopt a new Cross Asset Tier, in which a qualifying Member will receive an enhanced rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''), by achieving the corresponding required volume criteria for such tier on the Exchange's equity options platform, MEMX Options, as further described below.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99488 (Feb. 7, 2024), 89 FR 10121.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] The Exchange initially filed the proposed Fee Schedule changes on February 29, 2024 (SR–MEMX–2024–07). On March 14, 2024, the Exchange withdrew that filing and submitted this proposal.

[5] Market share percentage calculated as of March 14, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[6] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The Exchange proposes to adopt a new Cross Asset Tier which is designed to incentivize Members to increase their participation on both the Exchange's equities and options platforms. Currently, with respect to the Exchange's equities trading platform, the Exchange provides a base rebate of $0.0015 per share for executions of Added Displayed Volume. Under the proposed Cross Asset Tier 1, the Exchange will provide an enhanced rebate of $0.0026 for executions of Added Displayed Volume for Members that qualify by such tier by achieving an Options ADAV[7] in the Customer[8]/Professional[9] capacity on MEMX Options (*i.e.,* both categories combined) that is equal to or greater than 20,000 contracts. The Exchange proposes to provide Members that qualify for Cross Asset Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier). In connection with the adoption of Cross Asset Tier 1, the Exchange proposes to incorporate a definition of ''Options ADAV'' in the definitions section of the Fee Schedule, where Options ADAV will be defined as, for purposes of equities pricing, average daily added volume calculated as a number of contracts added on MEMX Options per day, calculated on a monthly basis. The Exchange will also indicate in a note under the Cross Asset Tier table on the Fee Schedule that the definitions of ''Customer'' and ''Professional'' capacity are those that are defined in the MEMX Options Fee Schedule.

The Exchange also proposes to specify in a note under the Cross Asset Tier table on the Fee Schedule that Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month. Effectively, this means that if a Member executes 20,000 or more contracts in the combined Customer/Professional categories on MEMX Options during a given month, that Member will receive that rebate for the total amount of Added Displayed Volume executed on the Exchange during that month and in the following month, even if such Member does not execute 20,000 or more combined contracts in the combined Customer/Professional categories on MEMX Options during that following month. This is different from the Exchange's current practice with respect to the remaining of its pricing tiers, whereby the Exchange calculates Members' applicable criteria such as ADAV on a monthly basis, and Members that qualify for enhanced rebates by achieving certain criteria receive the enhanced rebate per share for all applicable executions in that previous month. Accordingly, Members do not know whether they will receive the enhanced rebate at the time of execution, but rather, receive it at the end of the month based on their activity during that month.

To illustrate, the Exchange offers the following example: As proposed, at the end of March 2024, the Exchange will calculate a Member's Options ADAV for March 2024 and if that Member executed over 20,000 contracts in the Customer and/or Professional capacity, the Member would receive the enhanced rebate of $0.0026 per share for the Added Displayed Volume it executed in securities above $1.00 on the Exchange in March 2024, and it would also receive the enhanced rebate of $0.0026 per share for the Added Displayed Volume it executes on the Exchange in April 2024 (regardless of the Member's Options activity in April 2024). Accordingly, in this example, the Member will be aware of the rebate it will receive under Cross Asset Tier 1 during the month of April 2024, regardless of what their April 2024 Options ADAV is, because it is awarded based on its March 2024 Options ADAV. The Exchange notes that although the enhanced rebate of $0.0026 per share would be provided to the Member in April 2024, if the Member in the example above did not qualify for Cross Asset Tier 1 based on their April 2024 Options ADAV, the Member would no longer qualify for the enhanced rebate of $0.0026 per share for the Added Displayed Volume the Member executes in May 2024.

The tiered pricing structure for executions of Added Displayed Volume under the proposed Cross Asset Tier provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the proposed Cross Asset Tier reflects a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Additionally, the proposed process by which the enhanced rebate will be paid under the Cross Asset Tier allows Members to anticipate whether such rebate will apply at the time of execution based on whether the criteria was achieved in the prior month. The Exchange believes this method will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to increase their participation on both the Exchange and MEMX Options on an ongoing basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair

[6] *Id.*

[7] As further described below, a Member's ''Options ADAV'' for purposes of equities pricing means the average daily added volume calculated as a number of contracts added on MEMX Options per day by the Member, which is calculated on a monthly basis.

[8] As set forth on the MEMX Options Fee Schedule, ''Customer'' applies to any order for the account of a Priority Customer. Priority Customer shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

[9] As set forth on the MEMX Options Fee Schedule, ''Professional'' applies to any order for the account of a Professional.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added Displayed Volume, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to MEMX Options, which the Exchange believes would promote price discovery and enhance liquidity and market quality to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed Cross Asset Tier is reasonable, equitable and not unfairly discriminatory for these same reasons, as such tier would provide Members with an incremental incentive to achieve certain volume thresholds on MEMX Options, is available to all Members on an equal basis, and, as described above, is designed to encourage Members to maintain or increase their order flow on the Exchange, including in the form of displayed, liquidity-adding orders, in part due to the enhanced rebate received for executions of Added Displayed Volume on the Exchange, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to provide Members that qualify for the proposed Cross Asset Tier with same rebate for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange as is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

To the extent a Member participates on the Exchange but not on MEMX Options, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of MEMX Options. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on MEMX Options or not. The proposed pricing program is also fair and equitable in that membership on MEMX Options is available to all market participants which would provide them with access to the benefits on MEMX Options provided by the proposal, even where a member of MEMX Options is not necessarily eligible for the proposed enhanced rebate on the Exchange. Further, the proposed change will result in Members receiving either the same or an increased rebate than they would currently receive. The Exchange also notes that another Exchange has similar cross asset volume tiers.[13]

As it relates to the method by which the Exchange proposes to award the rebate under Cross Asset Tier 1, the Exchange believes it is reasonable, equitable and not unfairly discriminatory, as the tier will provide Members with incremental incentives to achieve certain volume thresholds on MEMX Options, is available to all Members on an equal basis, and, as described above, is reasonably designed to encourage Members to maintain or increase their order flow to the Exchange with an added layer of certainty in the rebate they will receive in the upcoming month, if applicable.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to MEMX Options, thereby enhancing liquidity and market quality to the benefit of all Members and market participants, as well as to generate additional revenue in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [15]

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[13] *See* the Cboe EDGX Options fee schedule available at: *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See supra* note 12.

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow to MEMX Options, thereby enhancing liquidity and market quality to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed change would impose any burden on intramarket competition because such change will apply to all Members uniformly, in that the proposed rebate for such executions would be the rebate applicable to all Members.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added Displayed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed change represents a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[17] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[16] *See supra* note 12.

[17] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and Rule 19b–4(f)(2) [19] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2024–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–10 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06453 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99819; File No. SR–CboeBYX–2024–004]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Definition of Retail Order, and Codify Interpretations and Policies Regarding Permissible Uses of Algorithms by RMOs

March 21, 2024.

On January 25, 2024, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of retail order, and codify interpretations and policies regarding permissible uses of algorithms by Retail Member Organizations (''RMOs''). The proposed rule change was published for comment in the **Federal Register** on February 13, 2024.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 29, 2024. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 13, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBYX–2024–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06448 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99818; File No. SR–CboeEDGA–2024–008]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Connectivity Offering Through Dedicated Cores

March 21, 2024.

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 19, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to introduce a new connectivity offering. A notice of the proposed rule change for publication in the **Federal Register** is attached as *Exhibit 1* [sic].

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce a new connectivity offering relating to the use of Dedicated Cores. By way of background, all Central Processing Units (''CPU Cores'') have historically been shared by logical order entry ports (*i.e.,* multiple logical ports from multiple firms may connect to a single CPU Core). Starting February 26, 2024, the Exchange began to allow Users[5] to

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99489 (Feb. 7, 2024), 89 FR 10138.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A User may be either a Member, Service Bureau or Sponsored Participant. The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. In a Service Bureau relationship a customer allows its MPID to be used on the ports of a technology provider, or Service Bureau. One MPID may be allowed on several different Service Bureaus. A Sponsored Participant may be a

assign a single BOE logical entry port to a single dedicated CPU Core (''Dedicated Core'').[6] Use of Dedicated Cores can provide reduced latency, enhanced throughput, and improved performance since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core instead of sharing that power with other firms. This offering is completely voluntary and is available to all Users.[7] Users will also continue to have the option to utilize BOE logical order entry ports on shared CPU Cores as they do today, either in lieu of, or in addition to, their use of Dedicated Core(s). As such, Users will be able to operate across a mix of shared and dedicated CPU Cores which the Exchange believes provides additional risk and capacity management. Further, Dedicated Cores are not required nor necessary to participate on the Exchange and as such Users may opt not to use Dedicated Cores at all.

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal would provide Users the option to assign a single BOE logical entry port to a single Dedicated Core. As described above, CPU Cores have historically been shared by logical order entry ports (*i.e.,* multiple logical ports from multiple firms may connect to a single CPU Core). Use of Dedicated Cores can provide reduced latency, enhanced throughput, and improved performance since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core instead of sharing that power with other firms. The Exchange also emphasizes that the use of Dedicated Cores is not necessary for trading and as noted above, is entirely optional. Indeed, Users can continue to access the Exchange through shared CPU Cores at no additional cost. Depending on a firm's specific business needs, the proposal enables Users to choose to use Dedicated Cores in lieu of, or in addition to, shared CPU Cores (or as noted, not use Dedicated Cores at all). The Exchange believes the proposal to operate across a mix of shared and dedicated CPU Cores may further provide additional risk and capacity management. The Exchange also notes another Exchange has a similar connectivity offering.[11]

Furthermore, this service is optional and is available to all Users. In this regard, some Users may determine it does not want or need Dedicated Cores and may continue their use of the shared CPU Cores, unchanged. The Exchange has no current plans to eliminate shared Cores nor require subscription to the dedicated offering.

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. Particularly, the Exchange believes the proposed rule change does not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because Dedicated Cores will be available to all Users. While the Exchange believes that the proposed Dedicated Cores provide a valuable service, Users can choose to purchase, or not purchase, Dedicated Cores based on their own determination of the value and their business needs. Indeed, no User is required or under any regulatory obligation to use Dedicated Cores.

Additionally, nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges offer various connectivity services as a means to facilitate the trading and other market activities of those market participants and at least one other exchange has an offering comparable to Dedicated Cores.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that another exchange has a connectivity offering

Member or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member subject to certain conditions. See Exchange Rule 11.3.

[6] The Exchange notes that firms will not have physical access to their Dedicated Core and thus cannot make any modifications to the Dedicated Core or server. All Dedicated Cores (including servers used for this service) are owned and operated by the Exchange.

[7] The Exchange intends to submit a separate rule filing to adopt monthly fees related to the use of Dedicated Cores.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* The Nasdaq Stock Market, Equity 7 Pricing Schedule, Section 115(g)(3), Dedicated Ouch Port Infrastructure.

[12] *See* The Nasdaq Stock Market, Equity 7 Pricing Schedule, Section 115(g)(3), Dedicated Ouch Port Infrastructure.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

comparable to Dedicated Cores.[17] The Commission believes that the proposed rule change presents no novel legal or regulatory issues, and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeEDGA–2024–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2024–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2024–008 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06447 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 12.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99831; File No. SR–PEARL–2024–12]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

March 21, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 Exchange Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the exchange grouping of options exchanges within the routing fee table in Section 1)b) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to (i) adjust the groupings of options exchanges; and (ii) adopt a new routing tier. The Exchange originally filed this proposal on January 31, 2024 (SR–PEARL–2024–06). On February 14, 2024, the Exchange withdrew SR–PEARL–2024–06 and resubmitted the proposal as SR–PEARL–2024–09. On February 26, 2024, SR–PEARL–2024–09, was rejected due to a technical issue with the filing. On February 26, 2024, the Exchange resubmitted a corrected proposal as SR–PEARL–2024–10. On March 8, 2024, the Exchange withdrew SR–PEARL–2024–10 and resubmitted this proposal.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program[3] (''Penny

[3] *See* Exchange Rule 510(c).

classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'') (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX Options'') and MIAX Emerald, LLC (''MIAX Emerald''). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table, and to add another fee tier to account for fees assessed at away markets and to better reflect the associated costs and fees of routing customer orders to certain away markets for execution.

Proposal

The Exchange proposes to amend the table in Section 1)b) of the Exchange's Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange.

The purpose of the proposed change is to adjust the routing fee groups for orders routed to other exchanges to better reflect the associated costs for that routed execution in Penny and Non-Penny Classes as determined by the fees assessed at the executing exchange. In determining to amend its routing fees the Exchange took into account transaction fees assessed by the away market to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Options and MIAX Emerald, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.[5] The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[6] to execute that corresponding contract at that corresponding exchange.

Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier and the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to segregate routing fees for SPY orders executed on Nasdaq MRX. Currently, the Exchange assesses a $0.30 fee for any Priority Customer order in a Penny Program symbol, routed to Nasdaq MRX. The Exchange now proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to include Nasdaq MRX (SPY Only) and to amend the ''Routed Priority Customer, Penny Program'' $0.30 fee tier to amend Nasdaq MRX to Nasdaq MRX (except SPY). This change is being made as Nasdaq MRX assesses a $0.20 per contract taker fee for Priority Customer orders in Penny Program symbols,[7] but does not assess a taker fee for Priority Customer SPY orders.[8] The proposed changes to the Exchange's fee schedule better reflect the taker fees charged by Nasdaq MRX for Priority Customer SPY orders.

Additionally, the Exchange proposes to similarly segregate Routed, Priority Customer SPY orders to the BOX Exchange (''BOX''). Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to specify that orders in this segment routed to BOX will be assessed a $0.15 fee except for SPY orders. Additionally, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to specify that SPY orders in this segment routed to BOX will be assessed a $0.30 fee. This change is being made as BOX does not assess a taker fee for Professional Customer orders in any Penny or Non-Penny classes[9] except for SPY orders where BOX assesses a $0.10 per contract taker fee.[10] The proposed changes are being made to better reflect the costs and fees associated with executing Priority Customer SPY orders on BOX.[11]

The Exchange proposes to amend the ''Routed, Priority Customer, Non-Penny Program'' $0.15 fee tier to remove Nasdaq ISE and to amend the ''Routed, Priority Customer, Non-Penny Program'' $1.00 fee tier to add Nasdaq ISE. This proposed change reflects fees charged by Nasdaq ISE when a Priority Customer trades against a Priority Customer.[12] This change is being made to better reflect the costs and fees associated with executing orders in this segment on Nasdaq ISE.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.15 fee tier to remove NOM and Nasdaq ISE. The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.00 fee tier to add NOM.[13] This change is being made to

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Nasdaq BX, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, NOM, or MEMX with a single fee of $1.25 per contract.

[6] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's goal regarding routing fees and expenses is to be as close as possible to net neutral.

[7] *See* Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, Table 1. The Exchange notes that on March 1, 2024, Nasdaq MRX increased the taker fee from $0.15 to $0.20 for Priority Customer orders in penny classes and increased the taker fee to $0.40 for Priority Customer orders in non-penny classes.

[8] *See* footnote 6 of Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides, ''Market Maker Tier 1 through Tier 4 Maker Fees/Rebates and Priority Customer Tier 1 through Tier 4 Taker Fees will be $0.00 per contract, in Penny Symbols, for the following options symbols: SPY, QQQ and IWM. *See also* Securities Exchange Release No. 98129 (August 14, 2023), 88 FR 56672 (August 18, 2023) (SR–MRX–2023–12).

[9] *See* BOX Exchange Fee Schedule, Section IV, Electronic Transaction Fees, A, Non-Auction Transactions.

[10] *See id.*

[11] BOX Exchange charges a $0.10 Taker fee for executions against Professional Customers/Broker Dealers, and Market Makers. *See* BOX Exchange Fee Schedule as of January 2, 2024, Section IV. Electronic Transaction Fees, A. Non-Auction Transactions, available online at *https://boxoptions.com/fee-schedule/.*

[12] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Priority Customer orders will be charged a taker fee of $1.00 per contract for trades executed against a Priority Customer.''

[13] NOM assesses an $0.85 taker fee for Customer and Professional orders in Non-Penny classes. *See* Nasdaq Stock Market Rules, Options 7, Pricing Schedule, Section 2, Nasdaq Options Market–Fees and Rebates, Fees to Remove Liquidity in Penny and Non-Penny Symbols.

better reflect the associated costs and fees of routing these customer orders to certain away markets for execution.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.25 fee tier to remove Cboe BZX Options and Nasdaq BX Options. The Exchange now proposes to adopt a new ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier to include Nasdaq ISE, Cboe BZX Options, and Nasdaq BX Options. This change is being made to better reflect the fees assessed for executions that occur on Cboe BZX Options,[14] Nasdaq ISE,[15] and Nasdaq BX Options [16] and the associated costs of routing customer orders to these away markets for execution.

As discussed above the Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. The per-contract transaction fee amount associated with each grouping, including the proposed ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier closely approximates the Exchange's all-in cost (plus an additional, non-material amount) [17] to execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Options and MIAX Emerald, the Exchange's Members [18] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Options and MIAX Emerald, will file to make the same proposed routing fee changes contained herein.

Implementation

The proposed rule changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [21] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings and the introduction of an additional fee tier would enable the Exchange to better reflect the costs and fees associated with routing orders to other exchanges for execution. Further, the new proposed fee tier is in line with what at least one other exchange that assesses a fee to similarly route customer orders for Non-Penny Classes to away markets for execution.[22]

The Exchange places away markets in the fee tier grouping that best approximates the Exchange's costs and fees to route the orders in that segment to that away market. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) [23] to execute the corresponding contract at the corresponding exchange. Other exchanges employ more simplistic models that provide for even fewer tiers than the Exchange (*e.g.,* two tiers on MEMX,[24] and five tiers on Cboe BZX) [25] in their attempt to reflect the costs and fees associated with routing and executing orders on other exchanges. The Exchange believes its tier structure represents the best approach to reflect the costs and fees associated with

[14] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' which assesses a $1.15 fee for Non-Customer orders, and an $0.85 fee for Customer orders, that remove liquidity in Non-Penny classes, available online at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[15] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3, Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Non-Priority Customer orders will be charged a taker fee of $1.25 per contract for trades executed against a Priority Customer.'' *See also* Securities Exchange Act Release No. 99024 (November 28, 2023), 88 FR 84014 (December 1, 2023) (SR–ISE–2023–28).

[16] *See* Nasdaq BX Rules, Options 7 Pricing Schedule, Section 2, BX Options Market-Fees and Rebates, paragraph (1) Fees and Rebates for Execution of Contracts on the BX Options Markets, which assesses a $1.25 Taker Fee for Non-Penny Symbols. *See also* Securities Exchange Act Release No. 99008 (November 21, 2023), 88 FR 83189 (November 28, 2023) (SR–BX–2023–31).

[17] *See supra* note 6.

[18] 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.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* C2 Options Fee Schedule, as of February 9. 2024, Linkage Routing Fees, which assesses a $1.55 fee for orders marked with fee code ''RD'' Routed (Customer), Non-Penny. The term ''Customer'' means a Public Customer or a broker-dealer. *See* Rules of Cboe C2 Exchange, Rule 1.1. ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Rules of Cboe C2 Exchange, Rule 1.1. The Exchange similarly defines ''Public Customer'' as a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[23] *See supra* note 6.

[24] *See* MEMX Options Fee Schedule, as of February 15, 2024, Routing Fees, which assesses a fee of $0.60 for orders in penny classes routed to other exchanges and $1.20 for orders in non-penny classes routed to other exchanges, available at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.*

[25] *See* Cboe BZX Options Fee Schedule, as of March 1, 2024, Fee Codes and Associated Fees, which assesses a $0.90 fee for non-customer orders in penny classes routed to other exchanges and a $1.25 fee for non-customer orders in non-penny classes routed to other exchanges, and additionally provides for three additional fee tiers for customer orders routed to other exchanges, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

routing and executing orders on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, while the introduction of a new fee tier is designed to allow the Exchange to better approximate the costs it incurs to route orders to Cboe BZX Options, Nasdaq ISE, and Nasdaq BX. The costs to the Exchange to route orders to away markets for execution primarily includes the transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. This new tier is reflective of the fees assessed on the away markets and the Exchange's cost to route orders to these away markets on behalf of Members. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to better reflect the costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.[26]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2) [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–PEARL–2024–12 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–2024–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–12 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06458 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[26] *See supra* note 4.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99829; File No. SR–EMERALD–2024–10]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule

March 21, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 exchange grouping of options exchanges within the routing fee table in Section (1)(b) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to (i) adjust the groupings of options exchanges; and (ii) adopt a new routing tier. The Exchange originally filed this proposal on January 31, 2024 (SR–EMERALD–2024–04). On February 14, 2024, the Exchange withdrew SR–EMERALD–2024–04 and resubmitted the proposal as SR–EMERALD–2024–07. On February 26, 2024, SR–EMERALD–2024–07, was rejected due to a technical issue with the filing. On February 26, 2024, the Exchange resubmitted a corrected proposal as SR–EMERALD–2024–08. On March 8, 2024, the Exchange withdrew SR–EMERALD–2024–08 and resubmitted this proposal.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program [3] (''Penny classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'') (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX Options'') and MIAX PEARL, LLC (''MIAX Pearl''). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table, and to add another fee tier, to account for fees assessed at away markets and to better reflect the associated costs and fees of routing customer orders to certain away markets for execution.

Proposal

The Exchange proposes to amend the table in Section (1)(b) of the Exchange's Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange.

The purpose of the proposed change is to adjust the routing fee groups for orders routed to other exchanges to better reflect the associated costs for that routed execution in Penny and Non-Penny Classes as determined by the fees assessed at the executing exchange. In determining to amend its routing fees the Exchange took into account transaction fees assessed by the away market to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Options and MIAX Pearl, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.[5] The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount) [6] to execute that corresponding contract at that corresponding exchange.

Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier and the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to segregate routing fees for SPY orders executed on Nasdaq MRX. Currently, the Exchange assesses a $0.30 fee for any Priority Customer order in a Penny Program symbol, routed to Nasdaq MRX. The Exchange now proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to include Nasdaq MRX (SPY Only) and to amend the ''Routed Priority Customer, Penny Program'' $0.30 fee tier to amend Nasdaq MRX to Nasdaq MRX (except SPY). This change is being made as Nasdaq MRX assesses a $0.20 per contract taker fee for Priority Customer orders in Penny Program symbols,[7] but does not assess a taker fee for Priority Customer SPY orders.[8] The proposed changes to the Exchange's fee schedule better reflect the taker fees charged by Nasdaq MRX for Priority Customer SPY orders.

Additionally, the Exchange proposes to similarly segregate Routed, Priority Customer SPY orders to the BOX Exchange (''BOX''). Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to specify that orders in this segment routed to BOX will be assessed a $0.15 fee except for SPY orders. Additionally, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to specify that SPY orders in this segment routed to BOX will be assessed a $0.30 fee. This change is being made as BOX does not assess a taker fee for Professional Customer orders in any Penny or Non-Penny classes [9] except for SPY orders where BOX assesses a $0.10 per contract taker fee.[10] The proposed changes are being made to better reflect the costs and fees associated with executing Priority Customer SPY orders on BOX.[11]

[3] *See* Exchange Rule 510(c).

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Nasdaq BX, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, NOM, or MEMX with a single fee of $1.25 per contract.

[6] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's goal regarding routing fees and expenses is to be as close as possible to net neutral.

[7] *See* Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, Table 1. The Exchange notes that on March 1, 2024, Nasdaq MRX increased the taker fee from $0.15 to $0.20 for Priority Customer orders in penny classes and increased the taker fee to $0.40 for Priority Customer orders in non-penny classes.

[8] *See* footnote 6 of Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides, ''Market Maker Tier 1 through Tier 4 Maker Fees/Rebates and Priority Customer Tier 1 through Tier 4 Taker Fees will be $0.00 per contract, in Penny Symbols, for the following options symbols: SPY, QQQ and IWM. *See also* Securities Exchange Release No. 98129 (August 14, 2023), 88 FR 56672 (August 18, 2023) (SR–MRX–2023–12).

[9] *See* BOX Exchange Fee Schedule, Section IV, Electronic Transaction Fees, A, Non-Auction Transactions.

[10] *See id.*

[11] BOX Exchange charges a $0.10 Taker fee for executions against Professional Customers/Broker

The Exchange proposes to amend the ''Routed, Priority Customer, Non-Penny Program'' $0.15 fee tier to remove Nasdaq ISE and to amend the ''Routed, Priority Customer, Non-Penny Program'' $1.00 fee tier to add Nasdaq ISE. This proposed change reflects fees charged by Nasdaq ISE when a Priority Customer trades against a Priority Customer.[12] This change is being made to better reflect the costs and fees associated with executing orders in this segment on Nasdaq ISE.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.15 fee tier to remove NOM and Nasdaq ISE. The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.00 fee tier to add NOM.[13] This change is being made to better reflect the associated costs and fees of routing these customer orders to certain away markets for execution.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.25 fee tier to remove Cboe BZX Options and Nasdaq BX Options. The Exchange now proposes to adopt a new ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier to include Nasdaq ISE, Cboe BZX Options, and Nasdaq BX Options. This change is being made to better reflect the fees assessed for executions that occur on Cboe BZX Options,[14] Nasdaq ISE,[15] and Nasdaq BX Options[16] and the associated costs of routing customer orders to these away markets for execution.

As discussed above the Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. The per-contract transaction fee amount associated with each grouping, including the proposed ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[17] to execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Options and MIAX Pearl, the Exchange's Members[18] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Options and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

Implementation

The proposed rule changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[19] in general, and furthers the objectives of Section 6(b)(4) of the Act[20] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[21] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings and the introduction of an additional fee tier would enable the Exchange to better reflect the costs it and fees associated with routing orders to other exchanges for execution. Further, the new proposed fee tier is in line with at least one other exchange that assesses a fee to similarly route customer orders for Non-Penny Classes to away markets for execution.[22]

Dealers, and Market Makers. *See* BOX Exchange Fee Schedule as of January 2, 2024, Section IV. Electronic Transaction Fees, A. Non-Auction Transactions, available online at *https://boxoptions.com/fee-schedule/*.

[12] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Priority Customer orders will be charged a taker fee of $1.00 per contract for trades executed against a Priority Customer.''

[13] NOM assesses an $0.85 taker fee for Customer and Professional orders in Non-Penny classes. *See* Nasdaq Stock Market Rules, Options 7, Pricing Schedule, Section 2, Nasdaq Options Market—Fees and Rebates, Fees to Remove Liquidity in Penny and Non-Penny Symbols.

[14] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' which assesses a $1.15 fee for Non-Customer orders, and an $0.85 fee for Customer orders, that remove liquidity in Non-Penny classes, available online at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/*.

[15] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3, Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Non-Priority Customer orders will be charged a taker fee of $1.25 per contract for trades executed against a Priority Customer.'' *See also* Securities Exchange Act Release No. 99024 (November 28, 2023), 88 FR 84014 (December 1, 2023) (SR–ISE–2023–28).

[16] *See* Nasdaq BX Rules, Options 7 Pricing Schedule, Section 2, BX Options Market-Fees and Rebates, paragraph (1) Fees and Rebates for Execution of Contracts on the BX Options Markets, which assesses a $1.25 Taker Fee for Non-Penny Symbols. *See also* Securities Exchange Act Release No. 99008 (November 21, 2023), 88 FR 83189 (November 28, 2023) (SR–BX–2023–31).

[17] *See supra* note 6.

[18] 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.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* C2 Options Fee Schedule, as of February 9, 2024, Linkage Routing Fees, which assesses a $1.55 fee for orders marked with fee code ''RD'' Routed (Customer), Non-Penny. The term ''Customer'' means a Public Customer or a broker-dealer. *See* Rules of Cboe C2 Exchange, Rule 1.1. ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Rules of Cboe C2 Exchange, Rule 1.1. The Exchange similarly defines

Continued

The Exchange places away markets in the fee tier grouping that best approximates the Exchange's costs and fees to route the orders in that segment to that away market. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) [23] to execute the corresponding contract at the corresponding exchange. Other exchanges employ more simplistic models that provide for even fewer tiers than the Exchange (*e.g.,* two tiers on MEMX,[24] and five tiers on Cboe BZX) [25] in their attempt to reflect the costs and fees associated with routing and executing orders on other exchanges. The Exchange believes its tier structure represents the best approach to reflect the costs and fees associated with routing and executing orders on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, while the introduction of a new fee tier is designed to allow the Exchange to better approximate the costs it incurs to route orders to Cboe BZX Options, Nasdaq ISE, and Nasdaq BX. The costs to the Exchange to route orders to away markets for execution primarily includes the transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. This new tier is reflective of the fees assessed on the away markets and the Exchange's cost to route orders to these away markets on behalf of Members. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to better reflect the costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.[26]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2) [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2024–10 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–2024–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–10 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06456 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

''Public Customer'' as a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[23] *See supra* note 6.

[24] *See* MEMX Options Fee Schedule, as of February 15, 2024, Routing Fees, which assesses a fee of $0.60 for orders in penny classes routed to other exchanges and $1.20 for orders in non-penny classes routed to other exchanges, available at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.*

[25] *See* Cboe BZX Options Fee Schedule, as of March 1, 2024, Fee Codes and Associated Fees, which assesses a $0.90 fee for non-customer orders in penny classes routed to other exchanges and a $1.25 fee for non-customer orders in non-penny classes routed to other exchanges, and additionally provides for three additional fee tiers for customer orders routed to other exchanges, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[26] *See supra* note 4.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99827; File No. SR–NYSEAMER–2024–21]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 7.31E

March 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31E regarding Discretionary Pegged Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31E(h)(3) to modify the operation of the Discretionary Pegged Order.

The Discretionary Pegged Order is a non-displayed order to buy (sell) that is pegged to the same side of the PBBO and assigned a working price equal to the lower (higher) of the midpoint of the PBBO (the ''Midpoint Price'') or the limit price of the order.[3] A Discretionary Pegged Order will exercise the least amount of discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the limit price of the order) to trade with contra-side interest. Rule 7.31E(h)(3)(A) provides that a Discretionary Pegged Order must be designated Day.[4] Rule 7.31E(h)(3)(B) provides that when exercising discretion, Discretionary Pegged Orders maintain their time priority at their working price as Priority 3—Non-Display Orders and are prioritized behind Priority 3—Non-Display Orders with a working price equal to the discretionary price of a Discretionary Pegged Order at the time of execution. If multiple Discretionary Pegged Orders are exercising price discretion during the same book processing action, they maintain their relative time priority at the discretionary price.

Rule 7.31E(h)(3)(C) currently provides that a Discretionary Pegged Order will not exercise discretion if the PBBO is determined to be unstable via a ''quote instability calculation'' that assesses the probability of a change to the PBB or PBO. Specifically, as set forth in current Rule 7.31E(h)(3)(D), the Exchange uses the quote instability calculation along with real-time relative quoting activity of protected quotations to assess the probability of an imminent change to the PBBO (the ''quote instability factor''). When the quoting activity meets predefined criteria described in Rule 7.31E(h)(3)(D)(i)(A) through (C) and the quote instability factor calculated is greater than the Exchange's quote instability threshold (defined in Rule 7.31E(h)(3)(D)(i)(D)(2)), the Exchange treats the quote as unstable. The quote stability calculation utilizes quote stability coefficients and quote stability variables, as defined in Rules 7.31E(h)(3)(D)(i)(D)(1)(a) and (b). In July 2022, the Exchange modified the quote stability calculation to incorporate updated quote stability coefficients that would allow the quote stability calculation to identify changes to the PBBO more accurately.[5]

The Exchange proposes to amend Rule 7.31E(h)(3) to modify the operation of Discretionary Pegged Orders based on the Exchange's assessment of the order type's impact on system performance, including the system resources required to perform the quote stability calculation. Specifically, the Exchange proposes to modify Rule 7.31E(h)(3) to provide that the Discretionary Pegged Order would not be restricted from exercising discretion during periods of quote instability, thereby eliminating the need to perform the quote stability calculation.

As proposed, the Discretionary Pegged Order would operate as defined in Rule 7.31E(h)(3) and as specified in current Rules 7.31E(h)(3)(A) and (B), without any changes except that the order would continue to exercise the least amount of price discretion necessary from its working price to its discretionary price to trade with contra-side orders on the Exchange Book without regard to potential quote instability. The Exchange thus proposes to delete the clause beginning with ''except'' in the last sentence of current Rule 7.31E(h)(3). In addition, because the Exchange proposes to permit Discretionary Pegged Orders to exercise discretion without considering potential quote instability, the Exchange would no longer perform the quote instability calculation to assess the probability of an imminent change to the PBBO or identify periods of quote instability. To effect this change, the Exchange proposes to delete current Rules 7.31E(h)(3)(C) and (D), including the subparagraphs thereunder. The Exchange also proposes to renumber current Rule 7.31E(h)(3)(E) as Rule 7.31E(h)(3)(C) to reflect those deletions.

Although the Discretionary Pegged Order, as modified, would no longer provide price protection during periods of quote instability, the Exchange believes that it would still provide ETP Holders with the flexibility and benefits of an order type that can exercise discretion to trade with contra-side interest. The Exchange notes that the Discretionary Pegged Order, as modified, would operate identically to the Discretionary Pegged Order offered by its affiliated exchange, NYSE Arca, Inc. (''NYSE Arca''), and similarly to order types currently offered by other equities exchanges.[6]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation of the proposed change by Trader Update. Subject to effectiveness of this rule filing, the Exchange will implement the proposed rule change no later than in the third quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of

[3] *See* Rule 7.31E(h)(3). As defined in NYSE American Rule 1.1, ''PBBO'' means the Best Protected Bid and the Best Protected Offer.

[4] The Exchange also proposes a non-substantive change to Rule 7.31E(h)(3)(A) to delete an extraneous comma.

[5] *See* Securities Exchange Act Release No. 95153 (June 24, 2022), 87 FR 39139 (June 30, 2022) (SR–NYSEAMER–2022–15) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 7.31E(h)(3) Relating to Discretionary Pegged Orders); *see also https://www.nyse.com/trader-update/history#110000436857* (Trader Update announcing implementation of updated quote stability calculation).

[6] *See* NYSE Arca Rule 7.31–E(h)(3) (defining Discretionary Pegged Order); *see also, e.g.,* Cboe EDGA Exchange, Inc. Rule 11.8(e) (defining the MidPoint Discretionary Order as a limit order to buy or sell that is pegged to the NBBO with discretion to execute at prices up or down to and including the midpoint of the NBBO); Cboe EDGX Exchange, Inc. Rule 11.8(g) (same).

[7] 15 U.S.C. 78f(b).

Section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to modify the operation of the Discretionary Pegged Order, further to the Exchange's assessment of the order type's impact on system performance, would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, as well as protect investors and the public interest, by continuing to provide ETP Holders with the benefits of an order type that can exercise discretion to trade with contra-side interest, without performing a quote instability calculation that would restrict such order from exercising discretion during periods of quote instability. The Exchange also believes that the proposed modification of the Discretionary Pegged Order would remove impediments to, and perfect the mechanism of, a free and open market and a national market system by modifying the Discretionary Pegged Order to function similarly to discretionary orders currently offered by other equities exchanges.[9]

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 believes that the proposed change would promote competition by permitting the Exchange to offer ETP Holders an order type that can exercise discretion to trade with contra-side interest and would not be restricted from doing so by a quote stability calculation. The Exchange also believes that the proposed modifications to the operation of the Discretionary Pegged Order could promote competition because the order type would function similarly to order types currently offered by other equities exchanges.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2024–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–21, and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06454 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] *See* note 7, *supra.*

[10] *See id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99830; File No. SR–MIAX–2024–15]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Exchange Fee Schedule

March 21, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the exchange grouping of options exchanges within the routing fee table in Section 1)c) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to (i) adjust the groupings of options exchanges; and (ii) adopt a new routing tier. The Exchange originally filed this proposal on January 31, 2024 (SR–MIAX–2024–05). On February 14, 2024, the Exchange withdrew SR–MIAX–2024–05 and resubmitted the proposal as SR–MIAX–2024–11. On February 26, 2024, SR–MIAX–2024–11 was rejected due to a technical issue with the filing. On February 26, 2024, the Exchange resubmitted a corrected proposal as SR–MIAX–2024–12. On March 8, 2024, the Exchange withdrew SR–MIAX–2024–12 and resubmitted this proposal.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program[3] (''Penny classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'') (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, MIAX PEARL, LLC (''MIAX Pearl'') and MIAX Emerald, LLC (''MIAX Emerald''). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table, and to add another fee tier to account for fees assessed at away markets and to better reflect the associated costs and fees of routing customer orders to certain away markets for execution.

Proposal

The Exchange proposes to amend the table in Section 1)c) of the Exchange's Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange.

The purpose of the proposed change is to adjust the routing fee groups for orders routed to other exchanges to better reflect the associated costs for that routed execution in Penny and Non-Penny Classes as determined by the fees assessed at the executing exchange. In determining to amend its routing fees the Exchange took into account transaction fees assessed by the away market to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Pearl and MIAX Emerald, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.[5] The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[6] to execute that corresponding contract at that corresponding exchange.

Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier and the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to segregate routing fees for SPY orders executed on Nasdaq MRX. Currently, the Exchange assesses a $0.30 fee for any Priority Customer order in a Penny Program symbol, routed to Nasdaq MRX. The Exchange now proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to include Nasdaq MRX (SPY Only) and to amend

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 510(c).

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Nasdaq BX, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, NOM, or MEMX with a single fee of $1.25 per contract.

[6] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's goal regarding routing fees and expenses is to be as close as possible to net neutral.

the ''Routed Priority Customer, Penny Program'' $0.30 fee tier to amend Nasdaq MRX to Nasdaq MRX (except SPY). This change is being made as Nasdaq MRX assesses a $0.20 per contract taker fee for Priority Customer orders in Penny Program symbols,[7] but does not assess a taker fee for Priority Customer SPY orders.[8] The proposed changes to the Exchange's fee schedule better reflect the taker fees charged by Nasdaq MRX for Priority Customer SPY orders.

Additionally, the Exchange proposes to similarly segregate Routed, Priority Customer SPY orders to the BOX Exchange (''BOX''). Specifically, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.15 fee tier to specify that orders in this segment routed to BOX will be assessed a $0.15 fee except for SPY orders. Additionally, the Exchange proposes to amend the ''Routed, Priority Customer, Penny Program'' $0.30 fee tier to specify that SPY orders in this segment routed to BOX will be assessed a $0.30 fee. This change is being made as BOX does not assess a taker fee for Professional Customer orders in any Penny or Non-Penny classes [9] except for SPY orders where BOX assesses a $0.10 per contract taker fee.[10] The proposed changes are being made to better reflect the costs and fees associated with executing Priority Customer SPY orders on BOX.[11]

The Exchange proposes to amend the ''Routed, Priority Customer, Non-Penny Program'' $0.15 fee tier to remove Nasdaq ISE and to amend the ''Routed, Priority Customer, Non-Penny Program'' $1.00 fee tier to add Nasdaq ISE. This proposed change reflects fees charged by Nasdaq ISE when a Priority Customer trades against a Priority Customer.[12] This change is being made to better reflect the costs and fees associated with executing orders in this segment on Nasdaq ISE.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.15 fee tier to remove NOM and Nasdaq ISE. The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.00 fee tier to add NOM.[13] This change is being made to better reflect the associated costs and fees of routing these customer orders to certain away markets for execution.

The Exchange proposes to amend the ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.25 fee tier to remove Cboe BZX Options and Nasdaq BX Options. The Exchange now proposes to adopt a new ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier to include Nasdaq ISE, Cboe BZX Options, and Nasdaq BX Options. This change is being made to better reflect the fees assessed for executions that occur on Cboe BZX Options,[14] Nasdaq ISE,[15] and Nasdaq BX Options [16] and the associated costs of routing customer orders to these away markets for execution.

As discussed above the Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. The per-contract transaction fee amount associated with each grouping, including the proposed ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program'' $1.40 fee tier closely approximates the Exchange's all-in cost (plus an additional, non-material amount) [17] to execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Pearl and MIAX Emerald, the Exchange's Members [18] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Pearl and MIAX Emerald, will file to make the same proposed routing fee changes contained herein.

Implementation

The proposed rule changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [21] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the

[7] *See* Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, Table 1. The Exchange notes that on March 1, 2024, Nasdaq MRX increased the taker fee from $0.15 to $0.20 for Priority Customer orders in penny classes and increased the taker fee to $0.40 for Priority Customer orders in non-penny classes.

[8] *See* footnote 6 of Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides, ''Market Maker Tier 1 through Tier 4 Maker Fees/Rebates and Priority Customer Tier 1 through Tier 4 Taker Fees will be $0.00 per contract, in Penny Symbols, for the following options symbols: SPY, QQQ and IWM. *See also* Securities Exchange Release No. 98129 (August 14, 2023), 88 FR 56672 (August 18, 2023) (SR–MRX–2023–12).

[9] *See* BOX Exchange Fee Schedule, Section IV, Electronic Transaction Fees, A, Non-Auction Transactions.

[10] *See id.*

[11] BOX Exchange charges a $0.10 Taker fee for executions against Professional Customers/Broker Dealers, and Market Makers. *See* BOX Exchange Fee Schedule as of January 2, 2024, Section IV. Electronic Transaction Fees, A. Non-Auction Transactions, available online at *https://boxoptions.com/fee-schedule/.*

[12] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Priority Customer orders will be charged a taker fee of $1.00 per contract for trades executed against a Priority Customer.''

[13] NOM assesses an $0.85 taker fee for Customer and Professional orders in Non-Penny classes. *See* Nasdaq Stock Market Rules, Options 7, Pricing Schedule, Section 2, Nasdaq Options Market—Fees and Rebates, Fees to Remove Liquidity in Penny and Non-Penny Symbols.

[14] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, ''Fee Codes and Associated Fees,'' which assesses a $1.15 fee for Non-Customer orders, and an $0.85 fee for Customer orders, that remove liquidity in Non-Penny classes, available online at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[15] *See* Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3, Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, ''Non-Priority Customer orders will be charged a taker fee of $1.25 per contract for trades executed against a Priority Customer.'' *See also* Securities Exchange Act Release No. 99024 (November 28, 2023), 88 FR 84014 (December 1, 2023) (SR–ISE–2023–28).

[16] *See* Nasdaq BX Rules, Options 7 Pricing Schedule, Section 2, BX Options Market-Fees and Rebates, paragraph (1) Fees and Rebates for Execution of Contracts on the BX Options Markets, which assesses a $1.25 Taker Fee for Non-Penny Symbols. *See also* Securities Exchange Act Release No. 99008 (November 21, 2023), 88 FR 83189 (November 28, 2023) (SR–BX–2023–31).

[17] *See supra* note 6.

[18] 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.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings and the introduction of an additional fee tier would enable the Exchange to better reflect the costs and fees associated with routing orders to other exchanges for execution. Further, the new proposed fee tier is in line with at least one other exchange that assesses a fee to similarly route customer orders for Non-Penny Classes to away markets for execution.[22]

The Exchange places away markets in the fee tier grouping that best approximates the Exchange's costs and fees to route the orders in that segment to that away market. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) [23] to execute the corresponding contract at the corresponding exchange. Other exchanges employ more simplistic models that provide for even fewer tiers than the Exchange (*e.g.,* two tiers on MEMX,[24] and five tiers on Cboe BZX) [25] in their attempt to reflect the costs and fees associated with routing and executing orders on other exchanges. The Exchange believes its tier structure represents the best approach to reflect the costs and fees associated with routing and executing orders on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, while the introduction of a new fee tier is designed to allow the Exchange to better approximate the costs it incurs to route orders to Cboe BZX Options, Nasdaq ISE, and Nasdaq BX. The costs to the Exchange to route orders to away markets for execution primarily includes the transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. This new tier is reflective of the fees assessed on the away markets and the Exchange's cost to route orders to these away markets on behalf of Members. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to better reflect the costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.[26]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2) [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–15 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–2024–15. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[22] *See* C2 Options Fee Schedule, as of February 9, 2024, Linkage Routing Fees, which assesses a $1.55 fee for orders marked with fee code ''RD'' Routed (Customer), Non-Penny. The term ''Customer'' means a Public Customer or a broker-dealer. *See* Rules of Cboe C2 Exchange, Rule 1.1. ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Rules of Cboe C2 Exchange, Rule 1.1. The Exchange similarly defines ''Public Customer'' as a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[23] *See supra* note 6.

[24] *See* MEMX Options Fee Schedule, as of February 15, 2024, Routing Fees, which assesses a fee of $0.60 for orders in penny classes routed to other exchanges and $1.20 for orders in non-penny classes routed to other exchanges, available at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.*

[25] *See* Cboe BZX Options Fee Schedule, as of March 1, 2024, Fee Codes and Associated Fees, which assesses a $0.90 fee for non-customer orders in penny classes routed to other exchanges and a $1.25 fee for non-customer orders in non-penny classes routed to other exchanges, and additionally provides for three additional fee tiers for customer orders routed to other exchanges, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[26] *See supra* note 4.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–15 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06457 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99828; File No. SR–NYSEAMER–2024–19]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 41 of the General Rules

March 21, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 20, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 41 of the General Rules to permit direct debiting of undisputed or final fees or other sums due the Exchange by member organizations with one or more equity trading licenses and each applicant for an equities trading license. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 41 of the General Rules (Failure to Pay Exchange Fees) to permit direct debiting of undisputed or final fees or other sums due to the Exchange by member organizations with one or more equity trading licenses and each applicant for an equities trading license.

Rule 41 currently governs failure to pay Exchange fees, other than fines or monetary sanctions which are governed by Rule 8320 of the Exchange's disciplinary rules.

The Exchange proposes to require member organizations that hold an equities trading license, and each applicant for an equities trading license, to provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange. The Exchange would, however, permit a member organization or applicant for a trading license to opt-out of the requirement to provide NSCC clearing account numbers and establish alternative payment arrangements. As proposed, the rule would be inapplicable to ATP Holders.[4] In addition, consistent with current Rule 41, the proposed change would not apply to disciplinary fines or monetary sanctions governed by Rule 8320. The proposed rule would also not apply to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA'').[5] The proposed change is based on the rules of other exchanges.[6]

Under the proposal, the Exchange would send a monthly invoice to each equities member organization, generally on the 5th business day of each month as is currently the practice, for the debit amount due to the Exchange for the prior month. The Exchange would also send files to NSCC each month by the 11th business day of the month in order to initiate the debit of the amount due to the Exchange as provided for in the prior month's invoice. The Exchange anticipates that NSCC will process the debits on the day it receives the file or the following business day. Because member organizations would be provided with an invoice approximately

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 900.2NY(5), ''ATP'' refers to an American Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. ''ATP Holder'' in turn refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ATP. References to ''member'' and ''member organization'' as those terms are used in the Exchange's rules are also deemed to be references to ATP Holders.

[5] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. Certain of the regulatory fees provided in the Price List are collected and retained by FINRA via the CRD system for the registration of employees of member organizations of the Exchange that are not FINRA members. These fees would be excluded from direct debiting.

[6] *See, e.g.,* MEMX LLC (''MEMX'') Rule 15.3(a) (Collection of Exchange Fees and Other Claims and Billing Policy) requires each MEMX member and all applicants for registration as members are required to provide one or more clearing account numbers that correspond to an account(s) at the NSCC for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due to the Exchange. As noted, Rule 41 does not apply to disciplinary fines or monetary sanctions, and the proposal does not propose to change this. The MEMX rule also requires members to submit billing disputes within a certain time period. The Exchange currently has a similar policy set forth under ''I'' of the General section in its Equities Price List, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf. See generally* note 7, *infra.*

1 week before the debit date, member organizations will have adequate time to contact the Exchange with any questions concerning the invoice. If a member organization disagrees with the invoice in whole or in part, the Exchange would not commence the debit for the disputed amount until the dispute is resolved. Specifically, the Exchange would not include the disputed amount (or the entire invoice if it is not feasible to identify the disputed amounts) in the NSCC debit amount where the member organization provides written notification of the dispute to the Exchange by the later of the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater.

Following receipt of the file from the Exchange, NSCC would proceed to debit the amounts indicated from the account of the member organization that clears the applicable transactions (''Clearing Member Organization,'' *i.e.,* either a member organization that is self-clearing or another member organization that provides clearing services on behalf of the member organization) and disburse such amounts to the Exchange. Where a member organization clears through another member organization, the Exchange understands that the estimated transaction fees owed to the Exchange are typically debited by the Clearing Member Organization on a daily basis using daily transaction detail reports provided by the Exchange to the Clearing Member Organization in order to ensure adequate funds have been escrowed. The Exchange notes that it is proposing to permit a member organization to designate one or more clearing account numbers that correspond to an account(s) at NSCC to permit member organizations that clear through multiple different clearing accounts to set up the billing process with the Exchange in a manner that is most efficient for internal reconciliation and billing purposes of the member organization.

The Exchange believes that the proposed debiting process would provide an efficient method of collecting undisputed or final fees and/or sums due to the Exchange consistent with the practice on other exchanges.[7] Moreover, the Exchange believes that it is reasonable to permit member organizations and applicants for equities trading licenses to opt-out of the requirement to provide an NSCC account number to permit direct debiting and instead establish alternative payment arrangements. Finally, the Exchange believes that it is also reasonable to provide for a $10,000 limitation on pre-debit billing disputes since it would be inefficient to delay a direct debit for a de minimis amount. Member organizations would still be able to dispute billing amounts that are less than $10,000 pursuant to the billing policy set forth in the Price List.[8]

To effectuate this change, the Exchange would add ''Collection of and'' before ''Failure to Pay Exchange Fees'' in the heading of Rule 41. The Exchange would also add the following new subsection (a) to Rule 41 (italicized):

(a) Collection of Exchange Fees. Each member organization that has one or more equity trading licenses, and each applicant for an equities trading license, shall be required to provide one or more clearing account numbers that correspond to an account(s) at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to collect through direct debit any undisputed or final fees and/or other sums due to the Exchange; provided, however, that a member organization or applicant may request to opt-out of the requirement to provide an NSCC clearing account number and establish alternative payment arrangements. If a member organization disputes an invoice, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater. The Exchange will not debit fees related to the CRD system set forth in the Price List, which are collected and retained by FINRA.

The current two paragraphs of Rule 41 would become new subsection (b), which would be titled ''Failure to Pay Exchange Fees.''

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed direct debit process would provide member organizations with an efficient process to pay undisputed or final fees and/or sums due to the Exchange.

The Exchange believes that the proposal to debit NSCC accounts directly is reasonable because it would ease the administrative burden on member organizations of paying monthly invoices and avoiding overdue balances, and would provide efficient collection from all member organizations who owe monies to the Exchange. Moreover, the Exchange believes that the minimum time frame provided to member organizations to dispute invoices is reasonable and adequate to enable member organizations to identify potentially erroneous charges. In addition, the Exchange believes that the $10,000 limitation on pre-debit billing disputes is reasonable because it would be inefficient to delay a direct debit for a de minimis amount. The same $10,000 limitation is in place on exchanges that have adopted direct debit rules.[11] Member organizations will still be able to dispute billing amounts that are less than $10,000 pursuant to the Exchange's Price List. Finally, the Exchange believes that it is reasonable to permit member organizations or applicants to request to opt-out of the requirement to provide NSCC account information and instead establish alternative payment arrangements with the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply uniformly to all member organizations that have one or more trading licenses and to all applicants for equities trading licenses, and will not disproportionately burden or otherwise impact any single member organization.

The Exchange does not believe that the proposal will create an intermarket burden on competition since the Exchange will only debit fees (other than de minimis fees below $10,000) that are undisputed by the member organization and member organizations will have a reasonable opportunity to dispute the fees both before and after the direct debit process. In addition, member organizations will have a reasonable opportunity to opt-out of the requirement to provide clearing account

[7] *See* note 6, *supra.* In addition to MEMX, IEX, Nasdaq, Nasdaq BX, and Nasdaq Phlx all provide for collection of fees and fines through direct debits. *See* IEX Rule 15.120; Nasdaq Rule Equity 7, Section 70; Nasdaq BX Rule Equity 7, Section 111; & Nasdaq Phlx Rule Equity 7, Section 2.

[8] *See* note 6, *supra.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 7, *supra.*

information and instead adopt alternative payment arrangements.

The Exchange also does not believe that the proposal will create an intramarket burden on competition, since the proposed direct debit process will be applied equally to all member organizations. Moreover, other exchanges utilize a similar process which the Exchange believes is generally familiar to member organizations. Consequently, the Exchange does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission in connection with direct debit and billing policies of other exchanges. Further, this proposal is expected to provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange. In addition, the debiting process would mitigate against member organization accounts becoming overdue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–19 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06455 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99833; File No. SR–CboeBZX–2023–101]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 21, 2024.

On December 5, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Pando Asset Spot Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on December 22, 2023.[3]

On February 1, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99197 (Dec. 22, 2023), 88 FR 88668 (''Notice''). Comments on the proposed rule change are available at *https://www.sec.gov/comments/sr-cboebzx-2023-101/srcboebzx2023101.htm.*

[4] 15 U.S.C. 78s(b)(2).

proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to generally reflect the performance of the price of bitcoin before payment of the Trust's expenses.[8] The Trust's assets will consist of bitcoin held by the Trust's bitcoin custodian on behalf of the Trust and cash holdings, if any.[9] The Trust will value its Shares daily based on the value of bitcoin as reflected by the CME CF Bitcoin Reference Rate (''Index'').[10] The administrator for the Trust will determine the net asset value (''NAV'') of the Trust on each day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. ET.[11] In determining the Trust's NAV, the administrator for the Trust will value the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. ET.[12]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–101 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [13] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. 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.

Pursuant to Section 19(b)(2)(B) of the Act,[14] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [15]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks commenters' views on whether the Exchange has sufficiently described the Trust, the terms of the Trust, and representations that would apply to the Trust, including the applicable listing standards.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. 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.[16]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 17, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 1, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–101 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–CboeBZX–2023–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright Protection. All submissions should refer to file number SR–CboeBZX–2023–101 and should be submitted on or before April 17, 2024. Rebuttal comments should be submitted by May 1, 2024.

---

[5] *See* Securities Exchange Act Release No. 99460, 89 FR 8472 (Feb. 7, 2024). The Commission designated March 21, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 88677. Pando Asset AG (''Sponsor'') is the sponsor of the Trust. *See id.* at 88669. Donald J. Puglisi is the trustee of the Trust. *See id.* at 88676.

[9] *See id.* at 88676. In seeking to achieve its investment objective, the Trust will only hold bitcoin, cash and cash equivalents. Coinbase Custody Trust Company, LLC will be responsible for custody of the Trust's bitcoin holdings. *See id.* at 88669, 88677.

[10] *See id.* at 88677.

[11] *See id.*

[12] *See id.*

[13] 15 U.S.C. 78s(b)(2)(B).

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5).

[16] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), 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 a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06459 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99823; File No. SR–PEARL–2024–14]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Exchange Fee Schedule To Modify Certain Connectivity and Port Fees

March 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[4] and non-Members; (2) amend the calculation of fees for MIAX Express Network Full Service (''MEO'')[5] Ports (Bulk and Single); and (3) amend the fees for Full Service MEO Ports (Bulk and Single). The Exchange and its affiliate, Miami International Securities Exchange, LLC (''MIAX'') operated 10Gb ULL connectivity on a single shared network that provided access to both exchanges via a single 10Gb ULL connection.

Beginning in January 2023, the Exchange determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[6] The Exchange has experienced ongoing increases in expenses in recent years. As discussed more fully below, the Exchange recently calculated annual aggregate costs of $15,593,990 for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX) and $1,989,497 for providing Full Service MEO Ports.[7]

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Full Service MEO Ports (Bulk and Single) in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[8] While the proposed fee changes are immediately effective, the Exchange notes that a version of the proposed fee changes has been effective since January 1, 2023 pursuant to the Exchange's initially filed proposal on December 30, 2022 (the ''Initial Proposal'').[9] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (the ''Second Proposal'').[10] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (the ''Third Proposal'').[11] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (the ''Fourth Proposal'').[12] On August 8, 2023, the

[17] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to the ''Exchange'' in this filing mean MIAX Pearl Options. Any references to the equities trading facility of MIAX PEARL, LLC, will specifically be referred to as ''MIAX Pearl Equities.''

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxglobal.com/alert/2022/08/12/miax-options-and-miax-pearl-options-announce-planned-network-changes-0.* The Exchange will continue to provide access to both the Exchange and MIAX over a single shared 1Gb connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[7] For the avoidance of doubt, all references to costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Options only and not MIAX Pearl Equities, the equities trading facility.

[8] The Exchange notes that MIAX will make a similar filing to increase its 10Gb ULL connectivity fees.

[9] *See* Securities Exchange Act Release No. 96632 (January 10, 2023), 88 FR 2707 (January 17, 2023) (SR–PEARL–2022–62).

[10] *See* Securities Exchange Act Release No. 97082 (March 8, 2023), 88 FR 15825 (March 14, 2023) (SR–PEARL–2023–05).

[11] *See* Securities Exchange Act Release No. 97420 (May 2, 2023), 88 FR 29701 (May 8, 2023) (SR–PEARL–2023–19).

[12] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third

Exchange withdrew the Fourth Proposal and replaced it with a revised proposal (the ''Fifth Proposal'').[13] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a further revised proposal (the ''Sixth Proposal'').[14] On November 27, 2023, the Exchange withdrew the Sixth Proposal and replaced it with a revised proposal (the ''Seventh Proposal'').[15] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (the ''Eighth Proposal'').[16] On March 11, 2024, the Exchange withdrew the Eighth Proposal and replaced it with this further revised proposal (the ''Ninth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (separately among MIAX Pearl Options and MIAX Pearl Equities, MIAX and MIAX Emerald [17] (together with MIAX and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. Although the baseline cost analysis used to justify the proposed fees was made in the Initial, Second, Third, Fourth, Fifth, Sixth and Seventh Proposals, the fees themselves have not changed since the Initial, Second, Third, Fourth, Fifth, Sixth or Seventh Proposals and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Full Service MEO Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in a lower projected profit margin for 10Gb ULL connectivity and Full Service MEO Ports than the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Full Service MEO Ports. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses are more recent and more accurately reflect the Exchange's current expenses and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [18] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[19] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were

party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97815 (June 27, 2023), 88 FR 42759 (July 3, 2023) (SR–PEARL–2023–27).

[13] *See* Securities Exchange Act Release No. 98180 (August 21, 2023), 88 FR 58404 (August 25, 2023) (SR–PEARL–2023–35). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98658 (September 29, 2023) (SR–PEARL–2023–35).

[14] *See* Securities Exchange Act Release No. 98753 (October 13, 2023), 88 FR 72142 (October 19, 2023) (SR–PEARL–2023).

[15] *See* Securities Exchange Act Release No. 99140 (December 11, 2023), 88 FR 86951 (December 15, 2023) (SR–PEARL–2023–64).

[16] *See* Securities Exchange Act Release No. 99474 (February 5, 2024), 89 FR 9249 (February 9, 2024) (SR–PEARL–2024–05).

[17] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[18] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[19] *Id.*

consistent with the Act.[20] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[21] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [22] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[23] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [24] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[25] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [26] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [27] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [28]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [29] and remanded for further proceedings consistent with its opinion.[30] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [31] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[32] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [33] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[34]

As a result of the Commission's loss of the *NASDAQ vs. SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [35] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy

[20] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[21] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[22] *Id.* at page 2.

[23] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[24] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[25] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network) (the ''BOX Order''). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[26] See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[27] *Id.*

[28] *Id.*

[29] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ----, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[30] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[31] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[32] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[33] *Id.*

[34] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[35] *See supra* note 29, at page 2.

exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[36] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings[37] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[38] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as MIAX Pearl, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[39] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[40] and $80,383,000 for 2021.[41] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[42] and $22,843,000 for 2021.[43] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[44] and $44,800,000 for 2021.[45] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[46] and $30,687,000 for 2021.[47] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[48] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[49]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major

[36] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k-1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets. . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[37] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[38] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[39] The Exchange has filed, and subsequently withdrew, various forms of this proposed fee change numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[40] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[41] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[42] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[43] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[44] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[45] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[46] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[47] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[48] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[49] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

media outlets,[50] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[51] which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[52] this is not the reality experienced by exchanges such as MIAX Pearl. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[53] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act[54] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[55] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [56] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and place a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[57]

* * * * *

[50] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[51] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

[52] *See supra* note 26, at note 1.

[53] *See* Securities Exchange Act Release Nos. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03); 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04); 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11); 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12); 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18).

[54] 15 U.S.C. 78f(b)(4).

[55] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[56] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[57] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

10Gb ULL Connectivity Fee Change

MIAX Pearl Options filed a proposal to no longer operate 10Gb connectivity to MIAX Pearl Options on a single shared network with its affiliate, MIAX. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[58] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; (ii) removes provisions in the Fee Schedule that provide for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both MIAX Pearl Options and MIAX via the 1Gb network.

MIAX Pearl Options bifurcated the MIAX Pearl Options and MIAX 10Gb ULL networks in the first quarter of 2023, which change became effective on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network change and implementation plan and dates to provide market participants adequate time to prepare.[59] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to MIAX Pearl Options and MIAX at the applicable rate. The Exchange's proposed amended rate for 10Gb ULL connectivity is described below. Prior to the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity were able to connect to both MIAX Pearl Options and MIAX at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks[60] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to MIAX Pearl Options and no longer provides access to MIAX. Specifically, MIAX Pearl Options proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[61] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both MIAX Pearl Options and MIAX.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX. First, in the Definitions section of the Fee Schedule, the Exchange proposes to amend the last sentence in the definition of ''MENI'' to specify that the MENI can be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliate, MIAX, via a single, shared 1Gb connection. Next, the Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)–b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Full Service MEO Ports—Bulk and Single

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the calculation and amount of fees for Full Service MEO Ports. The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[62] a Full Service MEO Port-Single,[63] and a Limited Service MEO Port.[64] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine[65] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Prior to the Initial Proposal, the Exchange assessed Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates[66] on the Exchange, across all origin types, not including Excluded Contracts,[67] as compared to the Total Consolidated Volume (''TCV''),[68] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based

[58] *See supra* note 6.

[59] *Id.*

[60] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[61] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/pearl-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[62] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[63] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[64] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[65] A ''Matching Engine'' is a part of the Exchange's electronic system that processes options orders and trades on a symbol-by-symbol basis. *See* the Definitions Section of the Fee Schedule.

[66] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* the Definitions Section of the Fee Schedule.

[67] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[68] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Full Service MEO Port (Bulk) Fee Changes [69]

Current Full Service MEO Port (Bulk) Fees. The Exchange currently assesses all Members (Market Makers [70] and Electronic Exchange Members [71] (''EEMs'')) monthly Full Service MEO Port—Bulk fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port (Bulk) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for EEMs and Market Makers. In particular, for EEMs, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all EEMs that utilize Full Service MEO Ports (Bulk) a flat monthly fee of $7,500. For this flat monthly fee, EEMs will continue to be entitled to two (2) Full Service MEO Ports (Bulk) for each Matching Engine for the single monthly fee of $7,500. The Exchange now proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for Market Makers by moving away from the above-described volume tier-based fee structure to harmonize the Full Service MEO Port (Bulk) fee structure for Market Makers with that of the Exchange's affiliates, MIAX and MIAX Emerald.[72] The Exchange proposes that the amount of the monthly Full Service MEO Port (Bulk) fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (''ADV'') measurement based on classes traded by volume. The amount of monthly Market Maker Full Service MEO Port (Bulk) fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages. This change in how Full Service MEO Port (Bulk) fees are calculated is identical to how the Exchange assesses Market Makers Trading Permit fees, which is in line with how numerous exchanges charge similar membership fees.

Specifically, the Exchange proposes to adopt the following Full Service MEO Port (Bulk) fees for Market Makers: (i) $5,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) $7,500 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) $10,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $12,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $7,500 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $5,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume. The Exchange notes that the proposed tiers (ranging from $5,000 to $12,000) are lower than the tiers that the Exchange's affiliates charge for their comparable ports (ranging from $5,000 to $20,500) for similar per class tier thresholds.[73]

With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.[74] The Exchange will assess MIAX Pearl Options Market Makers the monthly Market Maker Full Service MEO Port (Bulk) fee based on the greatest number of classes listed on MIAX Pearl Options that the MIAX Pearl Options Market Maker registered to quote in on any given day within a calendar month. Therefore, with the proposed changes to the calculation of Market Maker Full Service MEO Port (Bulk) fees, the Exchange's Market Makers would be encouraged to quote in more series in each class they are registered in because each additional series in that class would not count against their total classes for purposes of the Full Service MEO Port (Bulk) fee tiers. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl Options in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Full Service MEO Port (Bulk) fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Full Service MEO Port (Bulk) fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the proposed Market Maker Full Service MEO Port (Bulk) fee table: (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl Options. In particular, the Exchange proposes to adopt footnote ''**'' following the Market Maker Full Service MEO Port (Bulk) fee table for these Monthly Full Service MEO Port (Bulk) tier levels. New proposed footnote ''**'' will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will

[69] The Exchange notes it last filed to amend the fees for Full Service MEO Ports in 2018 (excluding filings made in July 2021 through early 2022), prior to which the Exchange provided Full Service MEO Ports free of charge since the it launched operations in 2017 and absorbed all costs since that time. *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[70] 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.

[71] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[72] *See* MIAX Fee Schedule, Section 5)d)ii) and MIAX Emerald Fee Schedule, Section 5)d)ii).

[73] *See id.*

[74] Pursuant to Exchange Rule 602(a), a Member that has qualified as a Market Maker may register to make markets in individual series of options.

be $6,000 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote ''**'' is to provide a lower fixed fee to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed fees to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed fee. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, also provide lower MIAX Express Interface (''MEI'') Port fees (the comparable ports on those exchanges) for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.[75] The proposed changes to the Full Service MEO Port (Bulk) fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[76] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Market Makers may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on the lesser of either the per class traded or percentage of total national ADV measurement based on classes traded by volume, as described above. For illustrative purposes, the Exchange currently assesses a fee of $5,000 per month for Market Makers that reach the highest Full Service MEO Port (Bulk) tier, regardless of the number of Full Service MEO Ports allocated to the Market Maker. For example, assuming a Market Maker connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports (Bulk) per matching engine, this results in an effective fee of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month, as compared to other exchanges that charge over $1,000 per port and require multiple ports to connect to all of their matching engines.[77] This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[78] The Exchange proposes to increase Full Service MEO Port fees, with the highest monthly fee of $12,000 for the Full Service MEO Ports (Bulk). Market Makers will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Market Maker connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in an effective fee of $500 per Full Service MEO Port ($12,000 divided by 24).

FULL SERVICE MEO PORTS

[Bulk]

	Number of match engines	Total number of ports for Market Maker to connect to all match engines	Total fee (monthly)	Effective per port fee
Pricing Based on Market Maker Being Charged the Highest Tier (Current)	12	24	$5,000	$208.33
Pricing Based on Market Maker Being Charged the Highest Tier (as proposed)	12	24	12,000	500

Full Service MEO Port (Single) Fee Changes

Current Full Service MEO Port (Single) Fees. Prior to the Initial Proposal, the Exchange assessed all Members (Market Makers and EEMs) monthly Full Service MEO Port (Single) fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-

[75] *See* MIAX Fee Schedule, Section 5)d)ii), note ''*'' and MIAX Emerald Fee Schedule, Section 5)d)ii), note ''■''.

[76] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, NASDAQ Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* NASDAQ Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, NASDAQ Phlx and NASDAQ BX, Inc. (''BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option classes. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[77] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services (similar to the MIAX Pearl Options' MEO Ports, SQF ports are primarily utilized by Market Makers); ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity; NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees; GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[78] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port (Single) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Single) fees for EEMs and Market Makers. In particular, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all Members that utilize Full Service MEO Ports (Single) a flat monthly fee of $4,000. For this flat monthly fee, all Members will continue to be entitled to two (2) Full Service MEO Ports (Single) for each Matching Engine for the single monthly fee of $4,000.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout. For example, three (3) Members account for 64% of all 10Gb ULL connections and Full Service MEO Ports purchased.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[79] which are designed to recover a portion of the costs associated with directly accessing the Exchange. As described above, the Exchange's affiliates, MIAX and MIAX Emerald, also charge fees for their high throughput, low latency ports in a similar fashion as the Exchange proposes to charge for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[80] This concept is, therefore, not new or novel.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[81] in general, and furthers the objectives of Section 6(b)(4) of the Act[82] 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[83] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[84] and the Staff Guidance[85], the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [86] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [87] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [88]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Full Service MEO Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction

[79] *See id.*

[80] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[81] 15 U.S.C. 78f(b).

[82] 15 U.S.C. 78f(b)(4).

[83] 15 U.S.C. 78f(b)(5).

[84] *See supra* note 25.

[85] *See supra* note 26.

[86] *Id.*

[87] *Id.*

[88] *Id.*

fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX when MIAX Pearl Options commenced operations as a national securities exchange on February 7, 2017.[89] The Exchange and MIAX operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and 10Gb ULL shared extranet ports allowed Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[90] the connectivity needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX on a single shared 10Gb ULL network is no longer feasible. This required constant System expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX's Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[91]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the Exchange and MIAX by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees necessary to allow

[89] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Options Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of MIAX Pearl Options' affiliate, MIAX, via a single, shared connection).

[90] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[91] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and January 23, 2023 implementation date to provide market participants adequate time to prepare.[92] Beginning August 12, 2022, the Exchange worked with the then-current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of six (6) overall 10Gb ULL connectivity subscriptions across MIAX Pearl Options and MIAX when the 10Gb ULL network was bifurcated. This immaterial increase in overall connections reflects a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX, or chose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging an exchange from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing its operational enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[93] and Rule 19b–4 thereunder,[94] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[95] which requires, among other things, that exchange fees be reasonable and equitably allocated,[96] not designed to permit unfair discrimination,[97] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[98] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[99] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $15,593,990 (or approximately $1,299,500 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Full Service MEO Ports at $1,989,497 (or approximately $165,791 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members [100]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX. The Exchange also proposes to modify its Fee Schedule to charge tiered rates for Full Service MEO Ports (Bulk) depending on the number of classes assigned or the percentage of national ADV, which is in line with how the Exchange's affiliates, MIAX and MIAX Emerald, assess fees for their comparable MEI Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[101] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at

[92] *See supra* note 6.

[93] 15 U.S.C. 78s(b)(1).

[94] 17 CFR 240.19b–4.

[95] 15 U.S.C. 78f(b).

[96] 15 U.S.C. 78f(b)(4).

[97] 15 U.S.C. 78f(b)(5).

[98] 15 U.S.C. 78f(b)(8).

[99] *See supra* note 26.

[100] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[101] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[102] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (61.8% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to Full Service MEO Ports (2.7%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (35.5%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb ULL connectivity and Full Service MEO Port services, is $1,465,293 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Full Service MEO Ports by 12 months, then adding both numbers together), as further detailed below.

Lastly, the Exchange notes that, based on: (i) the total expense amounts contained in this filing (which are 2024 projected expenses), and (ii) the total expense amounts contained in the 2023 similar MIAX Pearl Equities filing

[102] For example, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, MIAX maintains 24 matching engines and MIAX Emerald maintains 12 matching engines.

(utilizing 2023 expenses), MIAX PEARL, LLC's total costs have increased at a greater rate over the last three years than the total costs of MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is also reflected in the total costs reported in MIAX PEARL, LLC's Form 1 filings over the last three years, when comparing MIAX PEARL, LLC to MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is primarily because that MIAX PEARL, LLC operates two markets, one for options and one for equities, while MIAX and MIAX Emerald each operate only one market. This is also due to higher current expense for MIAX PEARL, LLC for 2022, 2023 and 2024, due to a hardware refresh (*i.e.,* replacing old hardware with new equipment) for MIAX Pearl Options, as well as higher costs associated with MIAX Pearl Equities due to greater development efforts to grow that newer marketplace.[103] The Exchange confirms that there is no double counting of expenses between the options and equities platform of MIAX Pearl; the greater expense amounts of the MIAX PEARL, LLC (relative to its affiliated exchanges, MIAX and MIAX Emerald) is solely attributed to the unique factors of MIAX Pearl discussed above.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 27.3% of its overall Human Resources cost to offering physical 10Gb ULL connectivity).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% Of all
Human Resources	$6,058,041	$504,837	27.3
Connectivity (external fees, cabling, switches, etc.)	57,696	4,808	61.8
Internet Services and External Market Data	395,204	32,934	74.8
Data Center	946,590	78,883	61.8
Hardware and Software Maintenance and Licenses	1,186,815	98,901	59.8
Depreciation	2,446,896	203,908	61.3
Allocated Shared Expenses	4,502,748	375,229	50.8
Total	15,593,990	1,299,500	39.8

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because MIAX Pearl Options' cost allocation methodology utilizes the actual projected costs of MIAX Pearl Options (which are specific to MIAX Pearl Options, and are independent of the costs projected and utilized by MIAX Pearl Options' affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. MIAX Pearl Options provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the

[103] *See, e.g.,* Securities Exchange Act Release Nos. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)); 94851 (May 4, 2022), 87 FR 28077 (May 10, 2022) (SR–PEARL–2022–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order Price Protection Mechanisms and Risk Controls); 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR–PEARL–2022–29) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)); 95679 (September 6, 2022), 87 FR 55866 (September 12, 2022) (SR–PEARL–2022–34) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2614, Orders and Order Instructions and Rule 2618, Risk Settings and Trading Risk Metrics To Enhance Existing Risk Controls); 96905 (February 13, 2023), 88 FR 10391 (February 17, 2023) (SR–PEARL–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2618 To Add Optional Risk Control Settings); 97236 (March 31, 2023), 88 FR 20597 (April 6, 2023) (SR–PEARL–2023–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option).

Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3.1%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 48.5% of each employee's time from the above group to 10Gb ULL connectivity. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 17%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 48.5% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though, but for MIAX Emerald, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8%, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to MIAX Emerald and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) MIAX Emerald itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage MIAX Emerald allocated to the internet Services and External Market Data cost driver is greater than the Exchange and its other affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (61.8%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[104] The Exchange notes that this allocation is greater than MIAX and MIAX Emerald options exchanges by a significant

[104] This expense may be greater than the Exchange's affiliated markets, specifically MIAX and MIAX Emerald, because, unlike the MIAX and MIAX Emerald, MIAX Pearl Options maintains an additional gateway to accommodate its Members' and Equity Members' access and connectivity needs. This added gateway contributes to the difference in allocations between MIAX Pearl Options, MIAX and MIAX Emerald. This expense also differs in dollar amount among the MIAX Pearl Options, MIAX, and MIAX Emerald because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

amount as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, the Exchange is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software and hardware used to provide 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 61.3% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is less than that of MIAX by approximately $10,553 per month due to two factors: first, MIAX has undergone a technology refresh since the time MIAX Pearl Options launched in 2017, leading to it having more hardware than software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Pearl Options maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Pearl Options' hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[105] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10Gb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 50.8% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 50.8% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote

[105] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 50.8% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Full Service MEO Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Full Service MEO Ports do not require as many broad or indirect resources as other core services.

* * * * *

Approximate Cost per 10Gb Connection per Month

After determining the approximate allocated monthly cost related to 10Gb connectivity, the total monthly cost for 10Gb ULL connectivity of $1,299,500 was divided by the number of physical 10Gb ULL connections the Exchange maintained in December 2023 (108), to arrive at a cost of approximately $12,032 per month (rounded to the nearest dollar), per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

* * * * *

Costs Related to Offering Full Service MEO Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Full Service MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.9% of its overall Human Resources cost to offering Full Service MEO Ports).

Cost drivers	Allocated annual cost [c]	Allocated monthly cost [d]	% of all
Human Resources	$1,518,357	$126,530	6.9
Connectivity (external fees, cabling, switches, etc.)	1,018	85	1.1
Internet Services and External Market Data	5,766	481	1.1
Data Center	41,762	3,480	2.7
Hardware and Software Maintenance and Licenses	21,643	1,804	1.1
Depreciation	132,334	11,028	3.3
Allocated Shared Expenses	268,617	22,385	3.0
Total	1,989,497	165,793	5.1

[c] *See supra* note a (describing rounding of Annual Costs).
[d] *See supra* note b (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Full Service MEO Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤1.4%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage

amount of total cost allocated towards overall connectivity, including Full Service MEO Ports. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in Full Service MEO Ports in 2024 versus 2023 will have an impact on the percentage allocation of costs to those same Full Service MEO Ports in 2024 versus 2023, which will also impact the individual percentage allocation of costs to other ports offered by the Exchange, within the entire product group (*e.g.,* FIX Ports, Limited Service MEO Ports, Purge Ports, CTD Ports, and FXD Ports). Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Full Service MEO Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Full Service MEO Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Full Service MEO Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Full Service MEO Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Full Service MEO Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Full Service MEO Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing Full Service MEO Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Full Service MEO Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Full Service MEO Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[106] Thus, since market data from other exchanges is consumed at the Exchange's Full Service MEO Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Full Service MEO Ports.

The Exchange notes that the allocation for the internet Services and External Market Data cost driver is lower than that of its affiliate, MIAX, as MIAX allocated 5.5% of its internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Full Service MEO Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Full Service MEO Ports (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).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is less than its affiliate, MIAX, as MIAX allocated 5.5% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The

[106] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Full Service MEO Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Full Service MEO Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.3% of all depreciation costs to providing Full Service MEO Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange to Full Service MEO Ports because such software is related to the provision of Full Service MEO Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Full Service MEO Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

For example, the Exchange notes that the percentage it allocated to the depreciation cost driver for Full Service MEO Ports and the percentage its affiliate, MIAX, allocated to the depreciation cost driver for MIAX's Limited Service MEI Ports, differ by only 1.6%. However, MIAX's approximate dollar amount is greater than that of MIAX Pearl Options by approximately $7,000 per month. This is due to two primary factors. First, MIAX has under gone a technology refresh since the time MIAX Pearl Options launched in 2017, leading to it having more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Pearl Options maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Pearl Options' hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Full Service MEO Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 4.0% of the overall cost for directors was allocated to providing Full Service MEO Ports. The Exchange notes that the 3.0% allocation of general shared expenses for Full Service MEO Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Full Service MEO Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is less than its affiliate, MIAX, as MIAX allocated 7.3% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI Ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.

* * * * *

Approximate Cost per Full Service MEO Port per Month

Based on projected 2024 data, the total monthly cost allocated to Full Service MEO Ports of $165,793 was divided by the number of chargeable Full Service MEO Ports the Exchange maintained in December 2023 (25 total; 25 Full Service MEO Port, Bulk, and 0 Full Service MEO Port, Single), to arrive at a cost of approximately $6,632 per month, per charged Full Service MEO Port.

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Full Service MEO Ports) and did not double-

count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to 10Gb ULL physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (48.5%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 5.4% to Full Service MEO Ports and the remaining 46.1% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 16.2% for 10Gb ULL connectivity or 16.3% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (6.0% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Full Service MEO Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Full Service MEO Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 27.3% of its personnel costs to providing 10Gb ULL connectivity and 6.9% of its personnel costs to providing Full Service MEO Ports, for a total allocation of 34.2% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 65.8% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Full Service MEO Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 64.6% of the Exchange's overall depreciation and amortization expense to connectivity services (61.3% attributed to 10Gb ULL physical connections and 3.3% to Full Service MEO Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 35.4%) toward the cost of providing transaction services, membership services, other port services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Full Service MEO Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [107]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's

[107] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $15,593,990. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $15,714,000. The Exchange believes this represents a modest profit of 0.8% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Full Service MEO Port services will equal $1,989,497. Based on December 2023 data for Full Service MEO Port usage, the Exchange would generate annual revenue of approximately $2,016,000. The Exchange believes this would result in a small margin of 1.3% after calculating the cost of providing Full Service MEO Port services.

Based on the above discussion, even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in excessive pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Full Service MEO Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Full Service MEO Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains 12 matching engines while MIAX maintains 24 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[108] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 for the Exchange vs. $22,000 per month for NYSE American).[109] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[110] This is due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as low latency 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 does not believe it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Full Service MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Full Service MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Full Service MEO Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Full Service MEO Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), 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—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

---

[108] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[109] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[110] The Exchange has incurred a cumulative loss of $83 million since its inception in 2017 through full year 2022. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007743.pdf.*

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[111] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Full Service MEO Ports

The tiered pricing structure for Full Service MEO Ports has been in effect since 2018.[112] The Exchange now proposes a pricing structure that is used by the Exchange's affiliates, MIAX and MIAX Emerald, except with lower pricing for each tier for Full Service MEO Ports (Bulk) and a flat fee for Full Service MEO Ports (Single). Members that are frequently in the highest tier for Full Service MEO Ports consume the most bandwidth and resources of the network. Specifically, as noted above for 10Gb ULL connectivity, Market Makers who reach the highest tier for Full Service MEO Ports (Bulk) account for greater than 84% of ADV on the Exchange, while Market Makers that are typically in the lowest Tier for Full Service MEO Ports, account for less than 14% of ADV on the Exchange. The remaining 1% is accounted for by Market Makers who are frequently in the middle Tier for Full Service MEO Ports (Bulk).

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers during anticipated peak market conditions. The need to support billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[113] Thus, as the number of connections a Market Maker has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed tiered-

[111] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[112] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[113] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange.

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[114] 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. Prior to the Initial Proposal, this fee was unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[115] Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports (Bulk) per matching engine, this would result in a cost of $500 per Full Service MEO Port ($12,000 divided by 24).

[114] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services (similar to the MIAX Pearl Options' MEO Ports, SQF ports are primarily utilized by Market Makers); ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity; NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees; GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[115] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Full Service MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017 [116] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Full Service MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

[116] *See supra* note 110.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their membership on January 1, 2023 as a direct result of the proposed fee changes.[117] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the

[117] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See supra* notes 105–106. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted and would not impose any burden on competition. This is a technology driven change designed to meet customer needs. The proposed fees would assist the Exchange in recovering costs related to providing dedicated 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX enables the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market. The proposed rates for 10Gb ULL connectivity are structured to enable the Exchange to bifurcate its 10Gb ULL network shared with MIAX so that it can continue to meet current and anticipated connectivity demands of all market participants.

Similarly, and also in connection with a technology change, Cboe Exchange, Inc. (''Cboe'') amended its access and connectivity fees, including port fees.[118] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports,[119] tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[120] Cboe justified its proposal by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over- the-Counter (OTC) markets.'' [121] The Exchange concurs with the following statement by Cboe,

The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[122]

The Cboe proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[123] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[124] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [125] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[126]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[127]

[118] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost based justification.

[119] *See* Cboe Fee Schedule, Page 12, Logical Connectivity Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (BOE/FIX logical monthly port fees of $750 per port for ports 1–5 and $800 per port for port 6 or more; and BOE Bulk logical monthly port fees of $1,500 per port for ports 1–5, $2,500 per port for ports 6–30, and $3,000 for port 31 or more).

[120] *See supra* note 118 at 71676.

[121] *Id.*

[122] *Id.* at 71676.

[123] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30,

Continued

Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[128]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[129] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC and MIAX.[130] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[131] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[132] BZX,[133] and Cboe EDGA Exchange, Inc.[134]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, one comment letter on the Seventh Proposal, and one comment letter on the Eighth Proposal all from the same commenter.[135] In their letters, the commenters from SIG seek to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. In addition, one commenter states in their latest letter that ''the Exchanges are misleading in stating that their last increase in the 10Gb ULL connection was in 2021 while fully aware that the Exchanges have been charging members this increased rate since January 2023.'' [136] The Exchange has clarified the references to the 2021 fee increase, and acknowledges that a version of this proposed fee change has been in effect since January 2023, all legally pursuant to the currently effective process set forth in Section 19(b) of the Exchange Act. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[137] The Exchange believes issues raised by each commenter are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[138] and Rule 19b–4(f)(2) [139] 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

2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[128] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[129] *Id.* at 18426.

[130] *Id.*

[131] *Id.*

[132] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[133] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[134] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

[135] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024.

[136] *See* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated March 1, 2024.

[137] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[138] 15 U.S.C. 78s(b)(3)(A)(ii).

[139] 17 CFR 240.19b–4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2024–14 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–PEARL–2024–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2024–14 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[140]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06450 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99822; File No. SR–MIAX–2024–16]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify Certain Connectivity and Port Fees

March 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[3] and non-Members; and (2) amend the monthly port fee for additional Limited Service MIAX Express Interface (''MEI'') Ports[4] available to Market Makers.[5] The Exchange and its affiliate, MIAX PEARL, LLC (''MIAX Pearl'') operated 10Gb ULL connectivity (for MIAX Pearl's options market) on a single shared network that provided access to both exchanges via a single 10Gb ULL connection.

Beginning in January 2023, the Exchange determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX Pearl. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[6] The Exchange has experienced ongoing increases in expenses in recent years. As discussed more fully below, the Exchange recently calculated annual aggregate costs of

[140] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The MIAX Express Interface (''MEI'') is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100. For purposes of Limit Service MEI Ports, Market Makers also include firms that engage in other types of liquidity activity, such as seeking to remove resting liquidity from the Exchange's Book.

[6] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxglobal.com/alert/2022/08/12/miax-options-and-miax-pearl-options-announce-planned-network-changes-0.* The Exchange will continue to provide access to both the Exchange and MIAX Pearl over a single shared 1Gb connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

$14,410,793 for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX Pearl) and $2,399,192 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX Pearl as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[7] While the proposed fee changes are immediately effective, the Exchange notes that a version of the proposed fee changes has been effective since January 1, 2023 pursuant to the Exchange's initially filed proposal on December 30, 2022 (the ''Initial Proposal'').[8] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (the ''Second Proposal'').[9] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (the ''Third Proposal'').[10] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (the ''Fourth Proposal'').[11] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with a revised proposal (the ''Fifth Proposal'').[12] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a revised proposal (the ''Sixth Proposal'').[13] On November 27, the Exchange withdrew the Sixth Proposal and replaced it with a revised proposal (the ''Seventh Proposal'').[14] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (the ''Eighth Proposal'').[15] On March 11, 2024, the Exchange withdrew the Eighth Proposal and replaced it with this further revised proposal (the ''Ninth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX Pearl (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX Emerald [16] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. The Exchange continues to propose fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described

[7] The Exchange notes that MIAX Pearl Options will make a similar filing to increase its 10Gb ULL connectivity fees.

[8] *See* Securities Exchange Act Release No. 96629 (January 10, 2023), 88 FR 2729 (January 17, 2023) (SR–MIAX–2022–50).

[9] *See* Securities Exchange Act Release No. 97081 (March 8, 2023), 88 FR 15782 (March 14, 2023) (SR–MIAX–2023–08).

[10] *See* Securities Exchange Act Release No. 97419 (May 2, 2023), 88 FR 29777 (May 8, 2023) (SR–MIAX–2023–18).

[11] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97814 (June 27, 2023), 88 FR 42844 (July 3, 2023) (SR–MIAX–2023–25).

[12] *See* Securities Exchange Act Release No. 98173 (August 21, 2023), 88 FR 58378 (August 25, 2023) (SR–MIAX–2023–30). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98657 (September 29, 2023) (SR–MIAX–2023–30).

[13] *See* Securities Exchange Act Release No. 98752 (October 13, 2023), 88 FR 72117 (October 19, 2023) (SR–MIAX–2023–39).

[14] *See* Securities Exchange Act Release No. 99137 (December 11, 2023), 88 FR 86983 (December 15, 2023) (SR–MIAX–2023–48).

[15] *See* Securities Exchange Act Release No. 99476 (February 5, 2024), 89 FR 9194 (February 9, 2024) (SR–MIAX–2024–06).

[16] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in lower projected profit margins for 10Gb ULL connectivity and Limited Service MEI Ports, versus the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Limited Service MEI Ports based on 2023 costs. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses amounts are the most current and more accurately reflect the Exchange's current expense base and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [17] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[18] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[19] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[20] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [21] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[22] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [23] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[24] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [25] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [26] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [27]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [28] and remanded for further proceedings consistent with its opinion.[29] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [30] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission

[17] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[18] *Id.*

[19] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[20] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[21] *Id.* at page 2.

[22] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[23] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[24] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network) (the ''BOX Order''). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees (the ''Staff Guidance'').*

[26] *Id.*

[27] *Id.*

[28] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ---, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[29] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[30] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

previously remanded.[31] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [32] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[33]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [34] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[35] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [36] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[37] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[38] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020 [39] and $80,383,000 for 2021.[40] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of

[31] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[32] *Id.*

[33] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[34] *See supra* note 29, at page 2.

[35] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[36] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[37] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[38] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee change numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[39] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[40] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

$19,016,000 for 2020[41] and $22,843,000 for 2021.[42] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[43] and $44,800,000 for 2021.[44] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[45] and $30,687,000 for 2021.[46] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[47] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[48]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[49] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[50] which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[51] this is not the reality experienced by exchanges such as MIAX. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[52] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act[53] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[54] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [55] or (c) accept that certain competition-based arguments are applicable given the

[41] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[42] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[43] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[44] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[45] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[46] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[47] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[48] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[49] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[50] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

[51] *See supra* note 25, at note 1.

[52] *See* Securities Exchange Act Release Nos. 94890 (May 11, 2022), 87 FR 29945 (May 17, 2022) (SR–MIAX–2022–20); 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16); 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14); 94259 (February 15, 2022), 87 FR 9747 (February 22, 2022) (SR–MIAX–2022–08); 94256 (February 15, 2022), 87 FR 9711 (February 22, 2022) (SR–MIAX–2022–07); 93771 (December 14, 2021), 86 FR 71940 (December 20, 2021) (SR–MIAX–2021–60); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 93185 (September 29, 2021), 86 FR 55093 (October 5, 2021) (SR–MIAX–2021–43); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 92661 (August 13, 2021), 86 FR 46737 (August 19, 2021) (SR–MIAX–2021–37); 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35).

[53] 15 U.S.C. 78f(b)(4).

[54] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[55] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[56]

* * * * *

10Gb ULL Connectivity Fee Change

The Exchange filed a proposal to no longer operate 10Gb connectivity to the Exchange on a single shared network with its affiliate, MIAX Pearl Options. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[57] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; (ii) removes provisions in the Fee Schedule that provide for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both the Exchange and MIAX Pearl Options via the 1Gb network.

The Exchange bifurcated the Exchange and MIAX Pearl Options 10Gb ULL networks on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network change and implementation plan and dates to provide market participants adequate time to prepare.[58] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to the Exchange and MIAX Pearl Options at the applicable rate. The Exchange's proposed amended rate for 10Gb ULL connectivity is described below. Prior to the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity would be able to connect to both the Exchange and MIAX Pearl Options at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks[59] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to the Exchange and no longer provides access to MIAX Pearl Options. Specifically, the Exchange proposes to amend Sections 5)a)-b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[60] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both the Exchange and MIAX Pearl Options.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX Pearl Options. The Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)-b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the monthly port fee for Limited Service MEI Ports available to Market Makers.[61] The Exchange currently allocates two (2) Full Service MEI Ports[62] and two (2) Limited Service MEI

[56] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[57] *See supra* note 6.

[58] *Id.*

[59] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[60] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/miax-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[61] The Exchange notes that in its prior filings (the Initial, Second, Third, Fourth and Fifth Proposals), the Exchange proposed to adopt a tiered-pricing structure for Limited Service MEI Ports.

[62] 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.

Ports[63] per matching engine[64] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Market Makers were previously assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free. This fee was unchanged since 2016 (before the proposals to adopt a tiered fee structure).[65]

Limited Service MEI Port Fee Changes

The Exchange now proposes to amend the monthly fee per Limited Service MEI Port and increase the number of free Limited Service MEI Ports per matching engine from two (2) to four (4). Specifically, the Exchange will now provide the first, second, third, and fourth Limited Service MEI Ports for each matching engine free of charge. For additional Limited Service MEI Ports after the first four ports per matching engine that are provided for free (*i.e.,* beginning with the fifth Limited Service MEI Port), the Exchange proposes to increase the monthly fee from $100 to $275 per Limited Service MEI Port per matching engine.

Market Makers that elect to purchase more than the number of Limited Service Ports that are provide for free do so due to the nature of their business and their perceived need for numerous ports to access the Exchange. Meanwhile, Market Makers who utilize the free Limited Service MEI Ports do so based on their business needs.

The Exchange notes that it last proposed to increase its monthly Limited Service MEI Port fees in 2016 (other than the prior proposals to adopt a tiered fee structure for Limited Service MEI Ports),[66] and such increase proposed herein is designed to recover a portion of the ever increasing costs associated with directly accessing the Exchange.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[67] in general, and furthers the objectives of Section 6(b)(4) of the Act[68] 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[69] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[70] and the Staff Guidance,[71] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [72] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [73] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [74]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to

[63] 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.

[64] 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.

[65] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[66] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[67] 15 U.S.C. 78f(b).

[68] 15 U.S.C. 78f(b)(4).

[69] 15 U.S.C. 78f(b)(5).

[70] *See supra* note 24.

[71] *See supra* note 25.

[72] *Id.*

[73] *Id.*

[74] *Id.*

lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX Pearl Options when MIAX Pearl commenced operations as a national securities exchange on February 7, 2017.[75] The Exchange and MIAX Pearl Options operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX Pearl Options offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and 10Gb ULL shared extranet ports allowed Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX Pearl Options was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[76] the connectivity needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX Pearl Options on a single shared 10Gb ULL network is no longer feasible. This required constant System [77] expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX Pearl Options' Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[78]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX Pearl Options due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX Pearl Options. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX Pearl Options had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX Pearl Options 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX Pearl Options continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX Pearl Options. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the

[75] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of MIAX Pearl's affiliate, MIAX, via a single, shared connection).

[76] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[77] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[78] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

Exchange and MIAX Pearl Options by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees are necessary to allow the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and the January 23, 2023 implementation date to provide market participants adequate time to prepare.[79] Beginning August 12, 2022, the Exchange worked with the then-current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of six (6) overall 10Gb ULL connectivity subscriptions across the Exchange and MIAX Pearl Options when the 10Gb ULL network was bifurcated. This immaterial increase in overall connections reflects a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX Pearl Options, or choose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging an exchange from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing operational enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

[79] *See supra* note 6.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[80] and Rule 19b–4 thereunder,[81] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[82] which requires, among other things, that exchange fees be reasonable and equitably allocated,[83] not designed to permit unfair discrimination,[84] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[85] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[86] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $14,410,793 (or approximately $1,200,900 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $2,399,193 (or approximately $199,933 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members[87]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX Pearl Options. The Exchange also proposes to modify its Fee Schedule to amend the monthly fee for additional Limited Service MEI Ports and provide two additional ports free of charge for a total of four free Limited Service MEI Ports per matching engine to which each Member connects.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[88] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024

[80] 15 U.S.C. 78s(b)(1).

[81] 17 CFR 240.19b–4.

[82] 15 U.S.C. 78f(b).

[83] 15 U.S.C. 78f(b)(4).

[84] 15 U.S.C. 78f(b)(5).

[85] 15 U.S.C. 78f(b)(8).

[86] *See supra* note 25.

[87] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[88] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[89] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (59% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to additional Limited Service MEI Ports (5.5%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (35.5%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, is $1,400,833 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL

[89] For example, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 22.4% of its overall Human Resources cost to offering 10Gb ULL physical connectivity).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% of all
Human Resources	$5,097,079	$424,757	22.4
Connectivity (external fees, cabling, switches, etc.)	55,020	4,585	59.0
Internet Services and External Market Data	551,120	45,927	71.3
Data Center	881,177	$73,431	59.0
Hardware and Software Maintenance and Licenses	991,378	82,615	48.5
Depreciation	2,573,534	214,461	58.3
Allocated Shared Expenses	4,261,485	355,124	48.1
Total	14,410,793	1,200,900	35.6

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3.5%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289

employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 46% of each employee's time from the above group to 10Gb ULL connectivity.

The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 16%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 46% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of Internet Services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on various content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the Internet Services and External Market Data cost driver, even though but for MIAX Emerald, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8%, respectively, to the same cost driver). This is because: (i) a different percentage of the overall Internet Services and External Market Data cost driver was allocated to MIAX Emerald and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) MIAX Emerald itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage MIAX Emerald allocated to the Internet Services and External Market Data cost driver is greater than the Exchange and its other affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (59.0%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[90] The Exchange notes that this allocation is less than MIAX Pearl Options by a significant amount, and slightly less than MIAX Emerald, as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, MIAX Pearl Options is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software, and hardware used to provide 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 58.3% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or

[90] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl Options because, unlike the Exchange, MIAX Pearl Options maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl Options. This expense also differs in dollar amount among the Exchange, MIAX Pearl Options, and MIAX Emerald because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX Emerald, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is greater than that of MIAX Emerald by approximately $35,508 per month due to two factors: first, the Exchange has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware than software that is subject to depreciation. Second, the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of the Exchange's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[91] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10Gb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 48.1% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 48.1% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 48.1% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other core services.

* * * * *

Approximate Cost per 10Gb ULL Connection per Month

After determining the approximate allocated monthly cost related to 10Gb ULL connectivity, the total monthly cost for 10Gb ULL connectivity of $1,200,900 was divided by the number of physical 10Gb ULL connections the Exchange maintained in December 2023 (93), to arrive at a cost of approximately $12,913 per month (rounded up to the nearest dollar), per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

* * * * *

Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 5.7% of its

[91] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Allocated annual cost [c]	Allocated monthly cost [d]	% of all
Human Resources	$1,297,498	$108,125	5.7
Connectivity (external fees, cabling, switches, etc.)	2,730	228	2.9
Internet Services and External Market Data	42,377	3,531	5.5
Data Center	81,963	6,830	5.5
Hardware and Software Maintenance and Licenses	112,103	9,342	5.5
Depreciation	217,699	18,142	4.9
Allocated Shared Expenses	644,822	53,735	7.3
Total	2,399,192	199,933	5.9

[c] *See supra* note a (describing rounding of Annual Costs).
[d] *See supra* note b (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤3.5%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including Limited Service MEI Ports. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in Limited Service MEI Port usage in 2024 versus 2023 will have an impact on the percentage allocation of costs to those same Limited Service MEI Ports in 2024 versus 2023, which will also impact the individual percentage allocation of costs to other ports offered by the Exchange, within the entire product group (*e.g.,* FIX Ports, Full Service MEI Ports, Purge Ports, Clearing Trade Drop Ports, and FIX Drop Copy Ports). Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Limited Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which

employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Limited Service MEI Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Limited Service MEI Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing and maintaining Limited Service MEI Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Limited Service MEI Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[92] Thus, since market data from other exchanges is consumed at the Exchange's Limited Service MEI Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

The Exchange notes that the allocation for the Internet Services and External Market Data cost driver is greater than that of its affiliate, MIAX Pearl Options, as MIAX allocated 5.5% of its Internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and Internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Limited Service MEI Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Limited Service MEI Ports (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).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX allocated 5.5% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Limited Service MEI Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide Limited Service MEI Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 4.9% of all depreciation costs

[92] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

to providing Limited Service MEI Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Limited Service MEI Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Limited Service MEI Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX Emerald, allocated to the depreciation cost driver for Limited Service MEI Ports differ by only 1.7%. However, the Exchange's approximate dollar amount is greater than that of MIAX Emerald by approximately $8,773 per month. This is due to two primary factors. First, the Exchange has under gone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware that software that is subject to depreciation. Second, the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of the Exchange's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 10% of the overall cost for directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 7.3% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX allocated 7.3% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI Ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.[93]

* * * * *

[93] The Exchange allocated a slightly lower amount (7.3%) of this cost as compared to MIAX Emerald (8.7%). This is not a significant difference. However, both allocations resulted in a similar cost amount (approximately $0.6 million for MIAX and $0.8 million for MIAX Emerald), despite the Exchange having a higher number of Limited Service MEI Ports. MIAX Emerald was allocated a higher cost per Limited Service MEI Port due to the additional resources and expenditures associated with maintaining its recently enhanced low latency network.

Approximate Cost per Limited Service MEI Port per Month

Based on projected 2024 data, the total monthly cost allocated to Limited Service MEI Ports of $199,933 was divided by the total number of Limited Service MEI Ports utilized by Members in December, which was 1,785 (and includes free and charged ports), resulting in an approximate cost of $112 per port per month (when rounding to the nearest dollar). The Exchange used the total number of Limited Service MEI Ports it maintained in December for all Members and included free and charged ports. However, in prior filings, the Exchange did not include the expense of maintaining the two free Limited Service MEI Ports per matching engine that each Member receives when the Exchange discussed the approximate cost per port per month, but did include the two free Limited Service MEI Ports in the total expense amounts. As described herein, the Exchange changed its proposed fee structure since past filings to now offer four free Limited Service MEI Ports per matching engine to which each Member connects. After the first four free Limited Service MEI Ports, the Exchange proposes to charge $275 per Limited Service MEI Port per matching engine, up to a total of twelve (12) Limited Service MEI Ports per matching engine.

For the sake of clarity, if a Member wanted to connect to all 24 of the Exchange's matching engines and utilize the maximum number of Limited Service MEI Ports on each matching engine (*i.e.,* 12), that Member would have a total of 288 Limited Service MEI Ports (24 matching engines multiplied by 12 Limited Service MEI Ports per matching engine). With the proposed increase to now provide four Limited Service MEI Ports for free on each matching engine, that particular Member would receive 96 free Limited Service MEI Ports (4 free Limited Service MEI Ports multiplied by 24 matching engines), and be charged for the remaining 192 Limited Service MEI Ports (288 total Limited Service MEI Ports across all matching engines minus 96 free Limited Service MEI Ports across all matching engines).

As mentioned above, Members utilized a total of 1,785 Limited Service MEI Ports in the month of December 2023 (free and charged ports combined). Using December 2023 data to extrapolate out after the proposed changes herein go into effect, the total number of Limited Service MEI Ports that the Exchange would not charge for as a result of this increase in free ports is 942 (meaning the Exchange would

charge for only 843 ports) and amounts to a total expense of $105,504 per month to the Exchange ($112 per port multiplied by 942 free Limited Service MEI Ports).

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (46%) given their focus on functions necessary to provide 10Gb ULL physical connections. The salaries of those same personnel were allocated only 7.2% to Limited Service MEI Ports and the remaining 52.2% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 15% for 10Gb ULL connectivity or 15.8% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (4% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 23.5% of its personnel costs to providing 10Gb ULL and 1Gb ULL connectivity and 5.7% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 29.2% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 70.8% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 63.2% of the Exchange's overall depreciation and amortization expense to connectivity services (58.3% attributed to 10Gb ULL physical connections and 4.9% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 36.8%) toward the cost of providing transaction services, membership services, other port services, 1Gb connectivity, and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [94]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the

[94] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $14,410,793. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $14,518,284. The Exchange believes this represents a modest profit of 0.7% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services will equal $2,399,193. Based on December 2023 data for Limited Service MEI Port usage and counting for the proposed increase in free Limited Service MEI Ports and proposed increase in the monthly fee from $100 to $275 per port, the Exchange would generate annual revenue of approximately $2,768,700. The Exchange believes this would result in an estimated profit margin of 13.3% after calculating the cost of providing Limited Service MEI Port services. The Exchange notes that the cost to provide Limited Service MEI Ports is higher than the cost for the Exchange's affiliate, MIAX Pearl Options, to provide Full Service MEO Ports due to the substantially higher number of Limited Service MEI Ports used by Exchange Members. For example, utilizing December 2023 data, MIAX Market Makers utilized 1,785 Limited Service MEI Ports compared to only 360 Full Service MEO Ports (Bulk and Single combined) allocated to MIAX Pearl Options members.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[95] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 for the Exchange vs. $22,000 per month for NYSE American).[96] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2012.[97] This is due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as low latency 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 does not believe that it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from

[95] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[96] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[97] The Exchange has incurred a cumulative loss of $71 million since its inception in 2012 through full year 2022. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007741.pdf.*

10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), 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—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[98] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Limited Service MEI Ports

The proposed changes to the monthly fee for Limited Service MEI Ports is not unfairly discriminatory because it would apply to all Market Makers equally. All Market Makers would now be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same monthly rate regardless of the number of additional Limited Service MEI Ports they purchase. Certain market participants choose to purchase additional Limited Service MEI Ports based on their own particular trading/quoting strategies and feel they need a certain number of connections to the Exchange to execute on those strategies. Other market participants may continue to choose to only utilize the free Limited Service MEI Ports to accommodate their own

[98] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

trading or quoting strategies, or other business models. All market participants elect to receive or purchase the amount of Limited Service MEI Ports they require based on their own business decisions and all market participants would be subject to the same fee structure and flat fee. Every market participant may receive up to four (4) free Limited Service MEI Ports and those that choose to purchase additional Limited Service MEI Ports may elect to do so based on their own business decisions and would continue to be subject to the same flat fee. The Exchange notes that it filed to amend this fee in 2016 and that filing contained the same fee structure, *i.e.,* a certain number of free Limited Service MEI Ports coupled with a flat fee for additional Limited Service MEI Ports.[99] At that time, the Commission did not find the structure to be unfairly discriminatory by virtue of that proposal surviving the 60-day suspension period. Therefore, the proposed changes to the fees for Limited Service MEI Ports is not unfairly discriminatory because it would continue to apply to all market participants equally and provides a fee structure that includes four free Limited Service MEI Ports for one monthly rate that was previously in place and filed with the Commission.

The Exchange believes that its proposed fee for Limited Service MEI Ports is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Limited Service MEI Ports (either directly or through a Service Bureau), and will minimize barriers to entry by now providing all Members with four, instead of the prior two, free Limited Service MEI Ports.[100] As a result of the proposed fee structure, a significant majority of Members will not be subject to any fee, and only six Members will potentially be subject to a fee for Limited Service MEI Ports in excess of four per month, based on current usage. In contrast, other exchanges generally charge in excess of $450 per port without providing any free ports.[101] Even for Members that choose to maintain more than four Limited Service MEI Ports, the Exchange believes that the cost-based fee proposed herein is low enough that it will not operate to restrain any Member's ability to maintain the number of Limited Service MEI Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably less than competing exchanges charge.[102] Further, the number of assigned Limited Service MEI Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Limited Service MEI Ports.

The Exchange believes that providing four free Limited Service MEI Ports is fair and equitable, and not unfairly discriminatory because it will enable Members (and more Members than when the Exchange previously provided two free Limited Service MEI Ports) to access the Exchange on this basis without having to pay for Limited Service MEI Ports, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. The Exchange believes that four Limited Service MEI Ports is an appropriate number to provide for free because it aligns with the maximum number of such ports currently maintained by a substantial majority of Members. Based on a review of Limited Service MEI Port usage, 39 of 45 connected Members are not projected to be subject to any Limited Service MEI Port fees under the proposed fee. In determining the appropriate number of Limited Service MEI Ports to provide for free, the Exchange considered several factors. First, the Exchange believes that, with respect to Limited Service MEI Port usage, Members prefer at least two Limited Service MEI Ports, for redundancy purposes. Second, from a review of the number of Limited Service MEI Ports currently requested and assigned to each Member, the median number of ports per Member that utilizes Limited Service MEI Ports is four. Thus, the Exchange believes that having four ports appears to be reasonably sufficient for the majority of Members to access the Exchange. On that basis, the Exchange chose four Limited Service MEI Ports as the maximum number of ports for which it will not charge to access the Exchange. The Exchange notes that some Members use more Limited Service MEI Ports than other Members (and the four provided for free), which is driven by the nature and volume of the business they conduct on the Exchange, and the choices they make in segmenting that business across different Limited Service MEI Ports. Allowing for this expansive use of Exchange capacity represents an aggregate cost that the Exchange seeks to recover through charging for ports five and higher.

The proposed change is also designed to encourage Members to be efficient with their Limited Service MEI Port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing Limited Service MEI Ports. There is no requirement that any Member maintain a specific number of Limited Service MEI Ports and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate.

The Exchange assessed the proposed fee change's impact on all Members. The Exchange believes that the proposed fee change is fair and equitably allocated across all Members. As a threshold matter, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, the Exchange assessed whether there would be any differences in the amount of the projected fee that correlates to the type and/or size of different Members. This assessment revealed that the number of assigned Limited Service MEI Ports, and thus projected fees, correlates closely to a Member's inbound message volume to the Exchange. Specifically, as inbound message volume increases per Member, the number of requested and assigned Limited Service MEI Ports increases. The following table presents data from December 2023 evidencing the correlation between a Member's inbound message volume and the

[99] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[100] The following rationale to support providing a certain number of Limited Service MEI Ports for free prior to applying a fee is similar to that used by the IEX in a 2020 proposal to do the same as proposed herein. *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07).

[101] *See See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services (similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers); ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity; NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees; GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[102] Assuming a Member selects five Limited Service MEI Ports based on their business needs, that Member on MIAX would be charged only for the fifth Limited Service MEI Port and pay only the $275 monthly fee, as the first four Limited Service Ports would be free. Meanwhile, a Member that purchases five ports on NYSE Arca Options would pay $450 per port per month, resulting in a total charge of $2,250 per month. On Cboe BZX Options, that same member would pay $750 per port per month, resulting in a total charge of $3,750 per months for five ports. *See* NYSE Arca Options Fees and Charges, dated March 1, 2024, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf and* Cboe BZX Options Fee Schedule *available at https://www.cboe.com/us/options/membership/fee_schedule/.*

number of Limited Service MEI Port assigned to the Member as of December 31, 2023.

Number of ports	Average daily message traffic	Total message traffic	Overall percentage of all message traffic for month
1–4	3,847,597,203	76,951,944,054	22.99
5 or more	12,891,271,595	257,825,431,896	77.01

Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Limited Service MEI Ports. For example, the six Members that subscribe to five or more Limited Service MEI Ports and are subject to the proposed monthly fee on average account for 77.01% of December 2023 inbound messages over Limited Service MEI Ports. The 39 Members that, based on their December 2023 Limited Service MEI Port usage are not projected to be subject to any Limited Service MEI Port fees, on average account for only 22.99% of December 2023 inbound messages over Limited Service MEI Ports. Overall, no Member experienced a fee increase as a result of the proposed fee change and increase in the number of free ports. Three Members experienced a modest and proportionate fee decrease. All other Members saw no change in fees as a result of the proposed changes. On balance, based on the above data, the Exchange believes that the proposed fee structure changes (including moving from two free ports to four free ports) is fair and equitably allocated across all Members, and the impact of such proposed fee structure changes is consistent among Members based on Exchange access and usage.

The Exchange believes that the variance between projected fees and Limited Service MEI Ports usage is not unfairly discriminatory because it is based on objective differences in Limited Service MEI Port usage among different Members. The Exchange notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires the Exchange to maintain sufficient Limited Service MEI Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, the Exchange's incremental aggregate costs for all Limited Service MEI Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, the Exchange believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Limited Service MEI Ports fees.

While Limited Service MEI Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to the Exchange. Further, Members with relatively higher inbound message volume also request (and are assigned) more Limited Service MEI Ports than other Members, which in turn means they account for a disproportionate share of the Exchange's aggregate costs for providing Limited Service MEI Ports.[103] Therefore, the Exchange believes it is not unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Limited Service MEI Port fees.

To achieve consistent, premium network performance, the Exchange must build and maintain a network that has the capacity to handle the message rate requirements of its heaviest network consumers during anticipated peak market conditions. The resultant need to support 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. This need also requires the Exchange to purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[104] Thus, as the number of connections per Market Maker increases, other costs incurred by the Exchange also increase, *e.g.,* storage costs, surveillance costs, service expenses.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose—to partially recover the Exchange's aggregate costs, encourage the efficient use of Limited Service MEI Ports, and align fees with Members' Limited Service MEI Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members will receive four free Limited Service MEI Ports and pay the same proposed fee per Limited Service MEI Ports for each additional Limited Service MEI Port. Each Limited Service MEI Port is identical, providing connectivity to the Exchange on identical terms. While the proposed fee will result in a different effective ''per unit'' rate for different Members after factoring in the four free Limited Service MEI Ports, the Exchange does not believe that this difference is material given the overall low proposed fee per Limited Service MEI Port. Because the first four Limited Service MEI Ports are free of charge, each entity will have a ''per unit'' rate of less than the proposed fee. Further, the fee is not connected to volume based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on the Exchange. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Limited Service MEI Ports an entity selects and not on any other distinction applied by the Exchange. While entities that send relatively more inbound messages to the Exchange may select more Limited Service MEI Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on the Exchange rather than application of the fee by the Exchange. Members can determine how many Limited Service MEI Ports they need to

[103] *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07) (justifying providing 5 ports for free and charging a fee for every port purchased in excess of 5 ports based on the higher message traffic of subscribers with increased number of ports).

[104] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

implement their trading strategies effectively. The Exchange proposes to offer additional Limited Service MEI Ports at a low fee to enable all Members to purchase as many Limited Service MEI Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Limited Service MEI Ports will pay a greater percentage of the total projected fees than is represented by their Limited Service MEI Port usage, the Exchange does not believe that the proposed fee is unfairly discriminatory. It is not possible to fully synchronize the Exchange's objective to provide four free Limited Service MEI Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Limited Service MEI Ports. As proposed, the Exchange is providing a reasonable increased number of Limited Service MEI Ports to each Member without charge. In fact, the Exchange proposes to provide more Limited Service MEI Ports for free by increasing the number of available Limited Service MEI Ports that are provided for free from two to four. Any variance between projected fees and Limited Service MEI Port usage is attributable to objective differences among Members in terms of the number of Limited Service MEI Ports they determine are appropriate based on their trading on the Exchange. Further, the Exchange believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover the Exchange's directly-related costs as described herein) mitigates any disparate impact.

Further, the fee will help to encourage Limited Service MEI Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[105] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[106] By encouraging Members to be efficient with their Limited Service MEI Ports usage, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused Limited Service MEI Ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase. Additionally, because the Exchange will continue not to charge connectivity testing and certification fees to its Disaster Recovery Facility or where the Exchange requires testing and certification, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.[107]

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of the Exchange Members to continue to connect to the Exchange, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2012 [108] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of

[105] 17 CFR 242.1000–1007.

[106] 17 CFR 242.1001(a).

[107] By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. *See, e.g.,* Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

[108] *See supra* note 97.

Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl Options.[109] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Lastly, the Exchange does not believe its proposed changes to the monthly rate for Limited Service MEI Ports will place certain market participants at a relative disadvantage to other market participants. All market participants would be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same flat fee regardless of the number of additional Limited Service MEI Ports they purchase. All firms purchase the amount of Limited Service MEI Ports they require based on their own business decisions and similarly situated firms are subject to the same fees.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted and would not impose any burden on competition. This is a technology driven change designed to meet customer needs. The proposed fees would assist the Exchange in recovering costs related to providing dedicated 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX Pearl Options enables the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market. The proposed rates for 10Gb ULL connectivity are structured to enable the Exchange to bifurcate its 10Gb ULL network shared with MIAX Pearl Options so that it can continue to meet current and anticipated connectivity demands of all market participants.

Similarly, and also in connection with a technology change, Cboe amended its access and connectivity fees, including port fees.[110] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports,[111] tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[112] Cboe justified its proposal by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over- the-Counter (OTC) markets.'' [113] The Exchange concurs with the following statement by CBOE,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the

[109] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See supra* notes 91–92. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[110] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost based justification.

[111] *See* Cboe Fee Schedule, Page 12, Logical Connectivity Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (BOE/FIX logical monthly port fees of $750 per port for ports 1–5 and $800 per port for port 6 or more; and BOE Bulk logical monthly port fees of $1,500 per port for ports 1–5, $2,500 per port for ports 6–30, and $3,000 for port 31 or more).

[112] *See supra* note 110 at 71676.

[113] *Id.*

options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[114]

The Cboe proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[115] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[116] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [117] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[118]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[119] Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[120]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[121] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC and MIAX.[122] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[123] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[124] BZX,[125] and Cboe EDGA Exchange, Inc.[126]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, one comment letter on the Seventh Proposal, and one comment letter on the Eighth Proposal

---

[114] *Id.* at 71676.

[115] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[120] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[121] *Id.* at 18426.

[122] *Id.*

[123] *Id.*

[124] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[125] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[126] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

all from the same commenter.[127] In their letters, the commenters from SIG seek to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. In addition, one commenter states in their latest letter that ''the Exchanges are misleading in stating that their last increase in the 10Gb ULL connection was in 2021 while fully aware that the Exchanges have been charging members this increased rate since January 2023.'' [128] The Exchange has clarified the references to the 2021 fee increase, and acknowledges that a version of this proposed fee change has been in effect since January 2023, all legally pursuant to the currently effective process set forth in Section 19(b) of the Exchange Act. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[129] The Exchange believes issues raised by each commenter are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[130] and Rule 19b–4(f)(2) [131] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2024–16. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–16 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[132]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06449 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[127] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024.

[128] *See* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated March 1, 2024.

[129] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[130] 15 U.S.C. 78s(b)(3)(A)(ii).

[131] 17 CFR 240.19b–4(f)(2).

[132] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99817; File No. SR–FICC–2024–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement Services of All Eligible Secondary Market Transactions in U.S. Treasury Securities

March 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2024–005. On March 19, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the proposed rule change.[3] The proposed rule change, as modified by Partial Amendment No. 1, is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibit 5. Specifically, as originally filed, the description of the proposed rule change made a reference to an incorrect section of the GSD Rules. Partial Amendment No. 1 corrects that reference. Additionally, as originally filed, the description of the proposed rule change and Exhibit 5 contained inconsistent references regarding whether FICC or its Board would be responsible for approving membership applications and related membership matters. Partial Amendment No. 1 clarifies and corrects those references. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below and Exhibit 5.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''Rules'')[4] to (1) re-name GSD's correspondent clearing/prime broker services as the Agent Clearing Service and adopt provisions that are common in agent clearing models; (2) update the qualifications for certain membership categories and rules governing the operation of GSD's access models; and (3) improve the transparency and clarity of the Rules in describing the types of memberships available to legal entities that want to access GSD's central clearing services and the different ways both Members and, indirectly, legal entities that are not Members can access those services, as described below.

These proposed rule changes are primarily designed to ensure that FICC has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities in accordance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act,[5] as described below.

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

Executive Summary

FICC is proposing rule changes designed to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities in accordance with recent amendments to the standards for clearing agencies set forth in Rule 17Ad–22(e) under the Act.[6]

On December 13, 2023, the Commission adopted amendments to the standards applicable to covered clearing agencies, like FICC, that require such clearing agencies to have written policies and procedures reasonably designed to, among other things, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[7]

FICC developed the proposed rule changes following a review of its existing direct and indirect participation models. That review examined whether FICC's models provide market participants with access to FICC's clearance and settlement services in as flexible a means as possible, consistent with FICC's responsibility to provide sound risk management and comply with its regulatory risk management obligations under Rule 17Ad–22(e) and other parts of the Act.[8] Among other things, FICC considered whether FICC's existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution of a transaction, and other factors, and whether any such variation of treatment was necessary and appropriate in light of FICC's regulatory risk management obligations.[9]

As part of this review, FICC consulted with a wide range of stakeholders, including indirect participants, to ensure that FICC considered a sufficiently broad set of perspectives.[10] These consultations included one-on-one conversations with existing direct participants and indirect participants, industry associations representing buy- and sell-side market participants, and market participants that were considering becoming but had not yet become participants of FICC. Another aspect of this consultation was a survey conducted during the first half of 2023.[11]

One of the key findings of this outreach was that FICC's existing participation models are not broadly understood among market participants, and a majority of current Members are unsure which of the available access models they prefer to use for indirect participant activity. In addition, FICC identified that certain instances where it treated transactions differently based on the identity of the participant submitting the transaction or the identity of the participant party to the transaction were not necessary to ensure sound risk management and comply with its regulatory risk management obligations. Based on the results of its review of its access models, FICC has concluded that certain changes to the Rules would facilitate greater access to clearance and settlement of secondary market transactions in U.S. Treasury transactions, including by indirect participants.

First, as noted above, FICC's review found that many market participants are not familiar with the correspondent clearing/prime broker services. In particular, FICC found that market participants were not aware of the similarities between the services and other agent clearing models, such as those through which market participants in the cleared derivatives markets can execute commodity derivatives with third parties and then give them up to their futures commission merchant (''FCM'') for clearing. Market participants also did not appear to understand the agent clearing services as a workable ''done away'' model that allows indirect participants to access clearing through multiple direct participants.

Therefore, FICC is proposing to provide clarity by, among other things, re-naming its correspondent clearing/prime brokerage services as a single ''Agent Clearing Service'' and deleting and replacing the current provisions in Rule 8 with a rule that elaborates on the functioning and requirements of the agent clearing service. FICC believes that these changes, described in greater detail below, will allow Netting Members and their customers to recognize the similarities between FICC's indirect access model and FCM agent clearing models and to identify the agent clearing service as a workable ''done away'' model.

---

[4] Terms not defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] 17 CFR 240.17Ad–22(e)(18)(iv)(C). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Adopting Release'', and the rules adopted therein referred to herein as ''Treasury Clearing Rules''). FICC must implement the new requirements of Rule 17Ad–22(e)(18)(iv)(C) by March 31, 2025. FICC will file separate proposed rule changes to address other requirements applicable to it and adopted as part of the Treasury Clearing Rules.

[6] 17 CFR 240.17Ad–22(e).

[7] *Supra* note 5.

[8] Such regulatory risk management obligations are generally set forth in Rule 17Ad–22(e). 17 CFR 240.17Ad–22(e).

[9] 17 CFR 240.17Ad–22(e).

[10] *See also* page 168 of the Adopting Release, *available at https://www.sec.gov/files/rules/final/2023/34-99149.pdf* (''To ensure that it considers a sufficiently broad set of perspectives, the U.S. Treasury securities CCA generally should consult with a wide-range of stakeholders, including indirect participants, as it seeks to comply with proposed rule 17ad–22(e)(18)(iv)(C).'').

[11] FICC discussed this survey and the key findings in a paper, *available at https://www.dtcc.com/-/media/Files/Downloads/WhitePapers/Accessing-Potential-Expansion-US-Treasury-Clearing-White-Paper.pdf.*

Second, FICC has concluded that certain modifications to its membership criteria would facilitate open access and ensure that any variation in the Rules' treatment of transactions or members is indeed necessary and appropriate to meet the minimum standards regarding operations, governance, and risk management set forth in the SEC's regulations and the Act. These proposed rule changes would update certain qualifications for GSD's membership categories. Currently, FICC imposes a number of qualification requirements that, based upon its review, may not be necessary or appropriate to ensure compliance with applicable requirements under the Act. In particular, banks wishing to become Sponsoring Members are categorized as Category 1 Sponsoring Members and must meet certain capitalization requirements, while other Netting Members wishing to be Sponsoring Members are categorized as Category 2 Sponsoring Members and are subject to financial requirements based on FICC's assessment of the Sponsoring Member's anticipated activity and risk. Additionally, in order to be a Sponsored Member, a firm must currently be a ''qualified institutional buyer'' as such term is defined by Rule 144A under the Securities Act of 1933 or satisfy the financial requirements necessary to be a qualified institution buyer.[12] Based upon its review and general experience with the growth of the sponsored membership service[13] since the current tiered membership qualifications were first instituted, FICC has determined that such requirements are no longer relevant or appropriate for the purposes of facilitating access to clearance and settlement transactions of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.

FICC's proposed rule changes would aim to address these issues by eliminating the two categories of Sponsoring Members, applying the qualifications applicable to the current Category 2 Sponsoring Members to all Sponsoring Members, and removing the requirement that Sponsored Members either be qualified institutional buyers or satisfy the financial requirements of such definition. FICC believes that these changes would eliminate differential treatment of categories of indirect participants and direct participants that are not necessary for risk management or other regulatory purposes, and otherwise act as a limitation upon participants' access to GSD's central clearing services. These changes would thus enable access to FICC's clearing and settlement services for a variety of direct and indirect participants who may not currently be able to access those services. These changes would also facilitate greater understanding of FICC's membership qualifications and thereby support FICC's continued maintenance of objective, risk-based and publicly disclosed participation criteria.

Lastly, FICC has determined that providing a public road map of access models and simplifying certain definitions would allow both buy- and sell-side market participants to understand those models and thereby allow them to consider how to offer and price those models so as to ensure indirect participants can access central clearing. These proposed rule changes aim to achieve these goals. In particular FICC is proposing to amend the Rules to (a) provide a public road map of the different models for accessing the GSD services that are available to both Members and, indirectly, their customers; and (b) simplify the definitions of the different types of membership and other related definitions. FICC believes these clarifications would enhance the ability of market participants to understand the GSD access models that are available, thereby allowing them to determine how to offer and price FICC's currently available models to ensure that indirect participants can access central clearing.

Background

FICC, through GSD, serves as a central counterparty and provides real-time trade matching, clearing, risk management and netting for cash purchases and sales of U.S. Treasury securities as well as repurchase and reverse repurchase transactions involving U.S. Treasury securities (''repos'').[14] GSD's central counterparty services are available directly to entities that are approved to be Netting Members and indirectly to other market participants through its indirect access models—the Sponsored Service[15] or correspondent clearing/prime broker services.[16]

Currently, there are different Netting Member application categories based upon the type of legal entity (*i.e.,* Bank Netting Member, Dealer Netting Member, Inter-Dealer Broker Netting Member) and whether an entity is incorporated in the United States or not (*i.e.,* a Foreign Netting Member). Netting Member applicants must meet both financial and operational minimum eligibility requirements[17] and, as Members of GSD, must adhere to ongoing minimum membership standards.[18] Furthermore, both the minimum eligibility requirements and ongoing standards vary depending on the relevant Netting Membership category. However, in general, all Netting Member categories may access the services available through GSD's Comparison System[19] and Netting System.[20]

Market participants may also access GSD's clearing services indirectly through a Netting Member. There are currently two indirect participation models to facilitate this—the Sponsored Service[21] and the correspondent clearing/prime broker services.[22] Each of these indirect participation models gives market participants different options to consider in accessing FICC's clearance and settlement services, and the benefits of its central counterparty guaranty, multilateral netting and centralized default management. However, the primary difference between the two models is that an indirect participant who becomes a Sponsored Member must establish an indirect, limited purpose membership with FICC, whereas the correspondent clearing/prime broker services do not require an indirect member to establish any relationship with FICC.

The Sponsored Service permits Netting Members, approved by FICC as ''Sponsoring Members,'' to sponsor certain institutional firms, referred to as ''Sponsored Members'', into GSD membership.[23] The Sponsoring Member is permitted to submit to FICC for

[12] 17 CFR 230.144A.

[13] *See* Rule 3A, *supra* note 4. The service described in Rule 3A is referred to herein as the ''Sponsored Service''.

[14] GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

[15] *See* Rule 3A, *supra* note 4.

[16] *See* Rule 2 (Members) (providing that FICC shall make its services available to entities that are approved to be Members of GSD); Rule 3A (Sponsoring Members and Sponsored Members) (describing the Sponsored Service) and Rule 8 (Executing Firm Trades) (currently describing the correspondent clearing/prime broker services), *supra* note 4.

[17] *See* Rule 2A, *supra* note 4.

[18] *See* Rule 3, *supra* note 4.

[19] *See* Rule 5, *supra* note 4. GSD also has a limited membership that permits Comparison-Only Members to participate only in its Comparison System. FICC does not act as a central counterparty for activity processed through its Comparison System and the services offered through its Comparison System are not guaranteed by FICC.

[20] *See* Rule 11, *supra* note 4.

[21] *See* Rule 3A, *supra* note 4.

[22] *See* Rule 8, *supra* note 4.

[23] *See* Rule 3A, *supra* note 4. An entity that chooses to become a Sponsoring Member still retains its status as a Netting Member and can continue to submit any non-Sponsored Member activity to FICC as such.

comparison, novation and netting certain types of eligible transactions either between itself and its Sponsored Members (*i.e.,* ''done with''), or between the Sponsored Members and other third-party Netting Members (*i.e.,* ''done away''). For operational and administrative purposes, a Sponsored Member appoints its Sponsoring Member to act as processing agent with respect to the Sponsored Member's satisfaction of its securities and funds-only settlement obligations.

A Sponsored Member is a GSD member and the legal counterparty to FICC for any submitted transactions. However, the Sponsoring Member unconditionally guarantees to FICC the Sponsored Member's performance under a Sponsoring Member Guaranty, which guarantees to FICC the payment and performance of a Sponsored Member's obligations to FICC. Therefore, FICC relies on the financial resources of the Sponsoring Member in relying upon the Sponsoring Member Guaranty. If a Sponsoring Member fails to perform under the Sponsoring Member Guaranty, FICC may cease to act for the Sponsoring Member both as a Sponsoring Member as well as a Netting Member.

Netting Members may also submit to FICC eligible activity on behalf of their customers through the correspondent clearing/prime broker services. Here, the Netting Member is referred to as the ''Submitting Member'' and the customer is referred to as the ''Executing Firm''.[24] Unlike the Sponsored Service, FICC has no relationship with the Executing Firm and all obligations (*i.e.,* margin and settlement) under the Rules remain with the Submitting Member. Executing Firms may execute trades with any Netting Member, including their submitting Netting Member, or a customer of any other Netting Member in clearing. In addition, Submitting Members have the option of either netting Executing Firm activity with other activity they submit to FICC (*i.e.,* Submitting Member proprietary activity) or segregating Executing Firm activity in separate accounts. In all cases, however, the Submitting Member must identify the relevant Executing Firm(s) on the FICC transaction submission file.

[24] *See* Rule 8, *supra* note 4. There are no operational differences between the current correspondent clearing service and the prime broker service. FICC provides a report to prime brokers that identifies margin calculation for their customers transactions and does not provide such report to Members using the correspondent clearing service. FICC would provide consistent reporting to all Agent Clearing Members under the proposal.

Summary of Proposed Rule Changes

First, FICC is proposing to re-name GSD's existing correspondent clearing/prime broker services as the Agent Clearing Service, which would continue to allow Netting Members to submit, on behalf of their customers, transactions to FICC for novation. As such, this proposal would provide that for a Netting Member to continue to offer its customers access to GSD's services via the current correspondent clearing/prime broker services, it must apply to use the Agent Clearing Service by becoming an Agent Clearing Member.

This proposed change would improve the transparency of the Rules regarding the availability of this service to both Netting Members and, indirectly, their customers. This proposed change would enhance the ability of indirect participants to identify the correspondent clearing/prime broker services as a workable ''done away'' model that allows indirect participants to access clearing through multiple direct participants. Under these proposed rule changes, FICC would require Netting Members (in their new capacity as Agent Clearing Members) to process and record their customers' activity in separate ''Agent Clearing Member Omnibus Accounts'' to facilitate FICC's ability to monitor and, ultimately, risk manage that activity appropriately. These proposed changes would also provide that a Netting Member must apply to use the Agent Clearing Service and, as an Agent Clearing Member, shall be required, pursuant to the existing ongoing membership requirements in the Rules, to provide FICC with information regarding the customers for which it is acting. This information sharing would allow FICC to better identify and manage the risks posed by these indirect participants and would support FICC's compliance with the requirements of Rule 17Ad–22(e)(18)(iii) under the Act to monitor compliance with its participation requirements on an ongoing basis.[25]

Second, the proposed rule changes would update certain qualifications for GSD's membership categories. These proposed rule changes would (a) eliminate the two Sponsoring Member categories and apply to all Sponsoring Members the qualifications applicable to the current Category 2 Sponsoring Members; (b) remove the requirement that Sponsored Members either be ''qualified institutional buyers'' as such term is defined by Rule 144A under the Securities Act of 1933,[26] or satisfy the financial requirements of such definition; (c) clarify the eligibility criteria for non-U.S. Netting Member applicants; and (d) describe how FICC may consider Netting Member applicants that do not qualify under an existing Netting Member category. These proposed changes would support FICC's continued maintenance of objective, risk-based and publicly disclosed participation criteria and, therefore, facilitate open access to GSD's clearing services. The proposed rule changes would also improve the clarity of the Rules regarding the ways Members can access its services, while updating certain qualifications for membership.

Third, FICC is proposing to further disclose to the public, through the Rules, the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD's clearing services. These proposed rule changes would simplify and, therefore, clarify the criteria and related descriptions of the different models for accessing GSD's services by (a) providing to both Members and, indirectly, their customers a public road map of the different membership types, Netting Member categories and models for accessing GSD's services; and (b) simplifying the definitions of the different types of membership and other related definitions, and clarifying the eligibility criteria for different categories of Netting Members. These simplifications and clarifications, in turn, should enhance the ability of market participants, and in particular indirect participants, to understand and evaluate the comparative tradeoffs of using GSD's central clearing services depending on the relevant access model.

Finally, the proposed rule changes would make other technical corrections and updates to the Rules, as described below.

Description of Proposed Rule Changes

1. Re-Name the Correspondent Clearing/Prime Broker Services as the Agent Clearing Service

The proposed rule changes would re-name and consolidate the existing correspondent clearing/prime broker services into a single Agent Clearing Service and adopt additional provisions governing the use of this service. The proposed changes would provide market participants with an understanding of the operation of this service, the rights and obligations of the

[25] 17 CFR 240.17Ad–22(e)(18)(iii).

[26] 17 CFR 230.144A.

firms that access the GSD facilities through this participation model, and how this service otherwise replaces and continues the access and functions currently available under the correspondent clearing/prime services. To these ends, the proposed rule changes would primarily amend Rule 8, which currently describes the correspondent clearing/prime broker services, to describe the Agent Clearing Service with more specificity. This new terminology and specificity are intended to demonstrate how this particular GSD access model operates similarly to the way market participants in the cleared derivatives markets can execute derivatives with third parties and then give them up to their FCM for clearing. Thus, the proposed changes to Rule 8 described herein are designed to be comparable to the terms of FCM-style agent clearing models.[27]

As described above, the existing correspondent clearing/prime broker services permit Submitting Members to submit activity to FICC for clearing on behalf of their customers, the Executing Firms. To do this, a Submitting Member must establish a relationship with one or more Executing Firms and provide FICC with notice of each customer confirming the Executing Firm relationship. However, in contrast with the Sponsored Service, FICC has no relationship with the Executing Firms.

Submitting Members are not currently required to, but can, segregate the Executing Firm activity in their submissions to FICC. In all instances, Submitting Members are responsible to FICC for all obligations, financial or otherwise, for that Executing Firm activity. While both Executing Firm activity and other Submitting Member activity (*i.e.,* Submitting Member proprietary activity) are generally processed in the same manner by FICC, Executing Member trade data must include an executing firm symbol for identification purposes.

While the proposed rule changes would change the terms used and otherwise enhance FICC's disclosures regarding the operation of the historical correspondent clearing/prime broker access models, most of the changes entailed by the shift to a single Agent Clearing Service would not alter in practice how Netting Members and their customers use this model to access GSD's services. Like the correspondent clearing/prime broker models, the Agent Clearing Service would the continue prior models' facilitation of agent-style trading by allowing Netting Members, which would be referred to in the Rules as ''Agent Clearing Members'' for this purpose, to act as processing agent and credit intermediary for their customers in clearing, to be referred to as ''Executing Firm Customers'' under the proposed changes.

As described below, the proposal also entails changes that would provide FICC with the ability to monitor activity submitted through this indirect access model, thereby managing the risks that this activity could present to FICC and the GSD membership. For example, as described in greater detail below, FICC would require that Netting Members (including Netting Members who are Submitting Members today) submit an application to become Agent Clearing Members and provide additional information regarding each Executing Firm Customer beyond what is required for Executing Firms today, such as a Legal Entity Identifier (''LEI''). Agent Clearing Members would also be required to submit activity on behalf of their customers through separate Agent Clearing Member Omnibus Accounts, as opposed to the optional segregated submission approach provided for today. For both initial and ongoing membership purposes, the proposal would require Agent Clearing Members to provide FICC with information related to their use of the Agent Clearing Service, as may be requested by FICC from time to time, as described in greater detail below.

a. Rule 8—Agent Clearing Service

Rule 8 currently describes the correspondent clearing/prime broker services at a high level. The proposed rule changes would delete and replace Rule 8 with a more detailed description of the correspondent clearing/prime broker services as a single Agent Clearing Service. These proposed changes would provide Netting Members and other market participants with a clearer description of the operation of this service and a better understanding of the availability of this indirect access model, as described below.

(i) Section 1—General

The proposed changes to Section 1 of Rule 8 would provide a general overview of the purpose and availability of the Agent Clearing Service. The proposed rule changes would update the information currently in Section 1 of Rule 8 to replace updated defined terms and to correctly identify the Members and other parties who can participate in this indirect model (*i.e.,* replace ''Submitting Member'' with ''Agent Clearing Member'').

(ii) Section 2—Agent Clearing Member Qualifications and Application Process

Section 2 would provide that a Netting Member, other than an Inter-Dealer Broker Netting Member, shall be eligible to apply to become an Agent Clearing Member. Inter-Dealer Broker Netting Members are currently not permitted to use the existing correspondent clearing/prime broker services because, pursuant to Section 8(e) of Rule 3, these firms are required to limit their business to acting exclusively as a Brokers, and therefore this limitation continues to apply.[28]

Section 2 would also provide that an applicant to be an Agent Clearing Member shall complete and deliver to FICC an application and any other information that FICC may request. FICC currently does not require a Netting Member to apply, or provide any additional information, to FICC to use the correspondent clearing/prime broker services. To strengthen its ability to identify, monitor and manage the material risks that indirect participants may present through their access to GSD's clearing services, FICC is proposing to require that Netting Members apply to be Agent Clearing Members by completing and submitting an application to FICC. Section 2 of Rule 8 would specify that the application would require information about the applicant's customers, past and/or projected volumes of applicant customer activity, and the applicant's controls for monitoring and mitigating risks, including customer risks. Section 2 would also state that an applicant must provide any other information that FICC reasonably requests for purposes of this initial application process.

In certain instances, FICC may find that a firm seeking to be an Agent Clearing Member may present risks that require further analysis and consideration by FICC before granting Agent Clearing Member status. Therefore, Section 2 of Rule 8 would introduce a new provision providing that FICC may require a firm to be a

[27] Many of the provisions that are being proposed to be added to Rule 8 are similar to provisions recently adopted to Rule 2D (Agent Clearing Members) of the Rules & Procedures of FICC's affiliate, National Securities Clearing Corporation (''NSCC''), *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.* In developing the agent clearing model, NSCC solicited input from market participants, including agent lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. *See id.*

[28] This limitation that Inter-Dealer Broker Netting Members are not eligible to use the existing correspondent clearing/prime broker services is currently in the definition of ''Submitting Member'' in Rule 1 and would be moved to this Section 2 of Rule 8. *Supra* note 4.

Netting Member for a period of time prior to applying for Agent Clearing Member status.

(iii) Section 3—Executing Firm Customer Relationships

Section 3 of Rule 8 would describe how an Agent Clearing Member may establish a relationship with an Executing Firm Customer under the Agent Clearing Service.

First, Section 3 would define an Executing Firm Customer as an entity for which an Agent Clearing Member submits transactions to FICC pursuant to the requirements of Rule 8.

Second, Section 3 would identify the information that an Agent Clearing Member must provide to FICC for each of its Executing Firm Customers. Currently, Section 3 of Rule 8 requires that the Submitting Member provide FICC with a notice of each customer that the Submitting Member intends to submit trades on behalf of, and requires that such notice (1) be provided to FICC not less than 3 Business Days prior to the commencement of the Member's initial data submission on behalf of each such Executing Firm, and (2) include ''the types of eligible transactions that will be submitted for Comparison System and/or Netting System processing.'' [29]

Under the proposed rules, FICC would no longer require that the customer notice include the types of transactions that would be submitted because it would accept any Agent Clearing Transactions submitted on behalf of an Executing Firm Customer, pursuant to Section 4 of Rule 8, described below. Instead, FICC is proposing to require that Agent Clearing Members provide the following information from each Executing Firm Customer: (1) the name and executing firm symbol of the Executing Firm Customer; (2) written authorization from the Executing Firm Customer to act on its behalf; (3) a LEI for the Executing Firm Customer; [30] (4) confirmation that the Executing Firm Customer and the Agent Clearing Member have entered into an agreement that binds the Executing Firm Customer to the applicable provisions of the Rules, as would be required by Section 3, described below; and (v) confirmation that the Executing Firm Customer understands, acknowledges and agrees to each of the Executing Firm Customer Acknowledgments set forth in, and as would be required by Section 6 of Rule 8, described in greater detail below.

The requirement that Agent Clearing Members provide FICC with a written authorization from its Executing Firm Customers, which FICC collects today pursuant to Section 3 of Rule 8, enables FICC to confirm that an agent clearing relationship exists between the Agent Clearing Member and the Executing Firm Customer. This requirement would be expanded to permit FICC to collect other information regarding the Executing Firm Customer and its agent clearing relationship with the Agent Clearing Members. Consistent with this change, FICC would therefore no longer accept trade data on behalf of an Executing Firm customer if it has not yet received the required written authorization.[31]

The proposed rules would require that the above-specified information be provided in a form acceptable to FICC no later than 3 Business Days prior to the commencement of the Agent Clearing Member's initial data submission on behalf of an Executing Firm Customer. This timeframe, currently in Rule 8, provides FICC with the ability to confirm on a timely basis that the information provided is complete and accurate and to update its systems to reflect the agent clearing relationship. Additionally, to facilitate the ability of Agent Clearing Members to submit trades on behalf of their Executing Firm Customers as quickly as possible, FICC would provide to Agent Clearing Members a standardized Executing Firm Customer information form. By requiring each Executing Firm Customer to complete and execute this standardized form, FICC would be able to ensure that the required information is provided in a form acceptable to it, while also ensuring that such information is consistent and comprehensive across all Executing Firm Customers.

In addition to requiring that it receive a LEI for each Executing Firm Customer when a relationship is established in the Agent Clearing Service, Section 3 would also require that each Agent Clearing Member maintain, on ongoing basis, a current LEIs for each of its Executing Firm Customers. Each Agent Clearing Member would also be required to indemnify FICC for any losses, liabilities, expenses and legal actions that could arise as a result of that Agent Clearing Member's failure to meet these requirements. The proposed requirement that Agent Clearing Members both provide and maintain a current LEI on file with FICC for each of its Executing Firm Customers and provide an indemnification related to this requirement are identical to existing requirements on Netting Members and Sponsoring Members, with respect to their Sponsored Members.[32]

As noted above, Section 3 of Rule 8 would require that an agreement between the Agent Clearing Member and the Executing Firm Customer bind the latter to the applicable provisions of the Rules. However, beyond this specific requirement the proposed changes would also acknowledge such an agreement may otherwise be on any terms and conditions mutually agreed to by the parties and confirm that the Rules do not prohibit any reimbursement or other payments sharing arrangements that may be established between those parties, away from FICC.

Finally, Section 3 would provide that Agent Clearing Members may, but are not required to, provide to FICC a written notice that it will no longer submit trades on behalf of an Executing Firm Customer. Section 3 of Rule currently requires Submitting Members to provide such notice to FICC. However, FICC does not see a need to mandate such notice because an Agent Clearing Member that terminates its agent clearing relationship with a customer may just cease to submit trades to FICC for processing. In any case, if an Agent Clearing Member chooses to submit such written notice to FICC, FICC would remove that relationship from its systems.

(iv) Section 4—Agent Clearing Transactions

Section 4 of Rule 8 would define Agent Clearing Transactions as transactions that are eligible to be submitted by an Agent Clearing Member on behalf of its Executing Firm

[29] *Supra* note 4.

[30] Rule 1 defines a Legal Entity Identifier as ''a 20-character reference code to uniquely identify legally distinct entities that engage in financial transactions. The Legal Entity Identifier is based on the ISO 17442 standard developed by the International Organization for Standardization and satisfies the standards implemented by the Global Legal Entity Identifier Foundation.'' *Supra* note 4.

[31] For this purpose, FICC is also proposing to remove a statement from Section 4 of Rule 8 that FICC may accept data ''on behalf of an Executing Firm even though a written notice . . . has not been received. . . .'' *See supra* note 4.

[32] Applicants to be Netting Members are also required to (i) provide FICC with a LEI as part of their application under Section 5 of Rule 2A, (ii) maintain a current LEI on file with FICC at all times under Section 2 of Rule 3, and (iii) indemnify FICC for any losses, liabilities, expenses and legal actions incurred as a result of its failure to maintain a current LEI on file with FICC under Section 2 of Rule 3. *Supra* note 4. Under Section 2(d) of Rule 3A, Sponsoring Members have an identical obligation to (i) provide FICC with a LEI for each of its Sponsored Members when onboarding those Sponsored Members, (ii) maintain a current LEI for each of its Sponsored Members on file with FICC at all times, and (iii) indemnify FICC from any losses resulting from a failure to adhere to these requirements. *Id.*

Customers. The existing scope of this definition would not change and would continue to exclude ''Netting Eligible Auction Purchases'', ''Brokered Transactions'', ''GCF Repo Transactions'' and ''CCIT Transactions'', as such terms are defined in the Rules.[33]

(v) Section 5—Rights and Obligations of Agent Clearing Members

Section 5 of Rule 8 would specify the rights and obligations of Agent Clearing Members, expanding on the provisions currently provided in Section 4 of Rule 8.[34] These provisions would provide that Agent Clearing Members have the right to submit Agent Clearing Transactions to FICC for clearing, subject to the applicable requirements set forth in the Rules, including, for example, the requirement that all such activity comply in all material respects with applicable laws. Section 5 would define the role of the Agent Clearing Members as processing agents of Executing Firm Customers and establish that Agent Clearing Members are liable to FICC for all obligations arising in connection with their Agent Clearing Transactions in the same manner as if the Agent Clearing Member had executed those trades. These proposed changes would also clarify that where an entity is both an Agent Clearing Member and a Netting Member, the obligations of that entity to satisfy all of the applicable obligations under the Rules and any other relevant arrangements with FICC across both types of membership apply comprehensively. Therefore, Section 5 would state that Agent Clearing Members' obligations to FICC in their capacity as Netting Members, both under the Rules and under any agreements between the Agent Clearing Member and FICC, also apply to them in their capacity as Agent Clearing Members, to their Agent Clearing Transactions and to their Agent Clearing Member Omnibus Accounts. The proposed changes to Section 5 would also explicitly clarify that FICC has no liability or obligations to any Executing Firm Customer.

Section 5 of Rule 8 would also provide for FICC's authority to obtain information from Agent Clearing Members on an ongoing basis. For example, this section would require Agent Clearing Members to provide FICC with information or reports that it may request pursuant to the existing, ongoing membership requirements in Section 2 of Rule 3, including information or reports related to their Agent Clearing Transactions.[35] In addition, FICC would have the right to request information that is similar to the information requested for Agent Clearing Member applications, for example, information regarding its customers, past and/or projected volumes of its customer activity, and its controls for monitoring and mitigating risks, including risks presented by those customers. These annual and ad hoc due diligence requests are key to FICC's ability to identify, monitor and manage the risks its Members may present to it and the broader GSD membership. The proposed changes would therefore support FICC's authority to request information from Agent Clearing Members regarding their Executing Firm Customers and their use of the Agent Clearing Service. By collecting this information at both the application process and through its regular due diligence requests, FICC would be able to identify, monitor, and, therefore, manage the risks posed by its Members' use of this service and the indirect participants.

(vi) Section 6—Executing Firm Customer Acknowledgements

Next, Section 6 of Rule 8 would include specific Executing Firm Customer acknowledgements with respect to their participation in the Agent Clearing Service. Because Executing Firm Customers would continue to have no relationship to FICC, the proposed changes to Section 6 would provide that Agent Clearing Members are responsible for affirming that their Executing Firm Customers understand, acknowledge and agree to the provisions in this Section of Rule 8. As noted above, the standardized authorization form that Agent Clearing Members would be required to provide to FICC would confirm that this requirement has been satisfied.

Like other proposed changes to Rule 8, these additions to Section 6 are common in other agent clearing models and, therefore, would be familiar to market participants looking to use the Agent Clearing Service.[36] These acknowledgements would include, for example, confirmation that the Agent Clearing Service is governed by the Rules, that FICC may deal exclusively with Agent Clearing Members and is not obligated to deal directly with Executing Firm Customers. The acknowledgements would also clarify that FICC does not have any obligations or liability to Executing Firm Customers.

(vii) Section 7—Agent Clearing Transactions Processing Rules

Finally, Section 7 of Rule 8 would describe certain rules regarding the processing of Agent Clearing Transactions.

First, Section 7 would provide that Agent Clearing Transactions would be recorded in accounts maintained by FICC on behalf of the Agent Clearing Member, defined as ''Agent Clearing Member Omnibus Accounts''. This proposed requirement would facilitate FICC's ability to identify, monitor and manage the risks that this activity may present. Currently, the existing correspondent clearing/prime broker services gives Netting Members discretion in choosing whether to record their customer activity in an account that is separate from their Netting Member account. Under this aspect of the proposal, that discretion would be removed by the new requirement under Section 7 that all Agent Clearing Transactions include an executing firm symbol that identifies the Executing Firm Customer. Section 7 would relatedly provide that Agent Clearing Transactions that do not contain an executing firm symbol be rejected by FICC.[37] Therefore, the proposed rule change would remove language currently in Section 2 of Rule 8 that states, if the Executing Firm is not

[33] GCF Repo Transactions and CCIT Transactions are currently excluded due to system limitations, and Brokered Transactions are necessarily excluded because Inter-Dealer Broker Netting Members are not permitted to act as Agent Clearing Members, as discussed above. The exclusion of Netting Eligible Auction Purchases is driven by the specific processing rules applicable to auctions that are external to FICC. The laws and regulations applicable to U.S. Treasury auctions are *available at https://treasurydirect.gov/laws-and-regulations/*.

[34] Section 4 of Rule 8 currently provides, ''A Submitting Member shall have the same rights, and incur the same responsibilities, as regards trade data by it to the Corporation on behalf of an Executing Firm as it does, pursuant to these Rules, regarding data submitted to the Corporation on its own trades.'' *Supra* note 4.

[35] Section 2 of Rule 3 currently provides that, ''Each Netting Member shall submit to the Corporation the reports, financial or other information set forth [in this Section 2] and such other reports, financial and other information as the Corporation from time to time may reasonably require.'' *Supra* note 4.

[36] *See supra* note 27.

[37] FICC is proposing to remove a statement currently in Section 5 of Rule 8 that says, ''The Corporation, in its sole discretion, may decline to accept trade data involving one or more Executing Firms, either generally for all trade data submitted to the Corporation or by Submitting Member.'' This statement addresses FICC's right to reject a trade if it does not meet trade submission criteria. The proposed changes to Rule 8 would address this right, making this statement no longer necessary. For example, as noted above, Section 2 would provide that FICC shall not act upon an instruction regarding an Executing Firm Customer until it obtains an authorization from that Executing Firm Customer and, as noted here, Section 7 would provide that FICC would reject any trade that does not include an executing firm symbol.

included on the trade data submitted to FICC, then FICC would process the trades as if it was not a customer trade. While this new mandatory approach would enable FICC to track and monitor distinct Executing Firm Customer activity, for risk management purposes Agent Clearing Members would have the option to net all of that activity in the same Agent Clearing Member Omnibus Account.[38]

Second, Section 7 would state that Agent Clearing Transactions would continue to be processed in the same way that FICC processes other transactions through the GSD netting, clearing and settlement systems, unless exceptions to that processing are specifically identified in Rule 8.

Third, Section 7 would include a description of how Agent Clearing Transactions are processed when the optional field identifying the contra-party is either omitted or does not match on the transaction file. Specifically, the Agent Clearing Transaction would be compared based on the executing firm symbol. This information is currently applicable to activity processed through the correspondent clearing/prime broker services and would be moved from Rule 10 to Rule 8.

Fourth, the proposed rule changes would move into Section 7 provisions from Section 2 of Rule 11, which describes the Netting System, and Section 11 of Rule 12, which describes processing of Same-Day Settling Trades.[39] These provisions are currently applicable to transactions processed through the correspondent clearing/ prime broker services and would continue to be applicable to Agent Clearing Transactions. Specifically, both provisions permit an Agent Clearing Member to notify FICC if it does not want Agent Clearing Transactions of a particular Executing Firm Customer to be netted and settled, in which case the transaction would only be compared through the Comparison System.

Fifth, Section 7 would state that if a loss is allocated to Members pursuant to Section 7 of Rule 4, the Agent Clearing Member, as principal, would be responsible for satisfying the loss allocation obligations that are calculated for its Executing Firm Customers. Section 7 would also provide that the Clearing Fund obligations applicable to an Agent Clearing Members' Agent Clearing Transactions would be calculated separately from the obligations calculated with respect to other activity of the Agent Clearing Member. However, FICC would have the right to apply any Clearing Fund deposits of an Agent Clearing Member to any obligations of that Member (including in their capacity as a Netting Member). As a substantive matter, the above two changes do not vary from how FICC calculates and applies loss allocation or Clearing Fund requirements under the correspondent clearing and prime broker services today. Therefore, these changes function more as conforming and clarifying disclosures with respect to these matters for Netting Members in their new capacity as Agent Clearing Members.[40]

Sixth and finally, Section 7 would include and clarify a provision that is currently in Section 6 of Rule 8 notifying Agent Clearing Members that the comparison output provided by FICC would identify the Executing Firm Customer for any Agent Clearing Transactions.

(viii) Other Rule Changes To Address Agent Clearing Service

The proposed changes would also amend Rule 1 to replace several definitions: ''Submitting Member'' with ''Agent Clearing Member'' and ''Executing Firm'' with ''Executing Firm Customer''. The Rule 1 changes would also add new definitions for ''Agent Clearing Member Omnibus Account'' and ''Agent Clearing Transactions''. The proposed changes would also correct the definition of ''GCF Counterparty'' to remove a reference to a Submitting Member acting for an Executing Firm because, as noted above, Agent Clearing Transactions do not include GCF Repo Transactions, and, as such, Agent Clearing Members cannot be GCF Counterparties.

The proposed rule changes would amend other Rules to reflect these updated defined terms or remove descriptions of how this service operates where those descriptions have been moved and restated in Rule 8. Revisions to other Rules include (i) Rule 2, to include Agent Clearing Members as an additional type of membership available to Netting Members, as described in greater detail below; (ii) Rules 5, 6A, 11 and 18, to replace references to ''Executing Firms'' with ''Executing Firm Customers'' and replace references to ''Submitting Member'' with ''Agent Clearing Member''; (iii) Rule 6C, to correct an incorrect statement in this Rule by removing a parenthetical that indicates GCF Counterparties could be Submitting Members for Executing Firms, because the definition of Agent Clearing Transactions excludes GCF Repo Transactions, as such term is defined in the Rules; (iv) Section 2 of Rule 11 and Section 11 of Rule 12 to remove statements that would be moved into Section 7 of Rule 8, as described above; (v) Rule 15, to remove Section 1, which would be addressed in Section 5 of Rule 8; (vi) Rule 24, to address the responsibility of Agent Clearing Members to pay all fees that are related to the Agent Clearing Member activity that is submitted pursuant to Rule 8, including any expenses that are incurred directly or indirectly by such Member; (vii) the Schedule of Required Data Submissions, to correct statements in this Schedule and clarify that Agent Clearing Members are required to include an executing firm symbol on the submission of all Agent Clearing Transactions; and (viii) the Fee Structure, to remove an incorrect statement from Section I(G) that indicates GCF Counterparties could be Members submitting trades for non-Members, because the definition of Agent Clearing Transactions excludes GCF Repo Transactions, as such term is defined in the Rules and to revise Section VI to address fees applicable to Agent Clearing Members to use the revised defined terms.

2. Update Certain Membership Qualifications To Facilitate Access to GSD's Services

FICC is proposing changes to certain membership qualifications that would improve FICC's ability to service a wide variety of market participants for both direct and indirect membership. These proposed changes are designed to facilitate open access to the clearance and settlement services offered by GSD and, therefore, would support FICC's compliance with the Treasury Clearing Rules.

a. Eliminate the Separate Categories of Sponsoring Members

FICC is proposing to eliminate the separate categories of Sponsoring Members and apply the standards

[38] Contemporaneously with this proposed rule change, FICC will propose additional rule changes to address how Agent Clearing Members and Sponsoring Members may elect to maintain separate accounts for clearing activity that satisfy the requirements described in Note H to Rule 15c3–3a, as it has been amended. *See* 15 U.S.C. 78s(b)(1). Such proposed rule changes would support FICC's compliance with the requirements of Rule 17Ad–22(c)(6)(i), as adopted by the Treasury Clearing Rules. *Supra* note 5. *See also* 17 CFR 240.15c3–3a.

[39] *See* definition of ''Same-Day Settling Trades'' in Rule 1, *supra* note 4. Same-Day Settling Trades are not netted prior to settlement so are settled through the Comparison System, as described in this provision.

[40] As noted above, FICC will propose changes to this section under a separate proposal to address the calculation, collection and application of Clearing Fund requirements under the Rules for certain, designated accounts. *Supra* note 38.

applicable to Category 2 Sponsoring Members to all Sponsoring Members.

When FICC established the Sponsored Service in 2005, it limited Sponsoring Member eligibility to only Bank Netting Members that met the criteria set out in Rule 3A.[41] In 2019, FICC expanded Sponsoring Member eligibility to also include Tier One Netting Members, other than Inter-Dealer Broker Netting Members, or Non-IDB Repo Brokers with respect to activity in its Segregated Repo Account.[42] At that time, FICC established two categories of Sponsoring Members—Category 1 Sponsoring Members are Bank Netting Members that meet the eligibility criteria described in Section 2(a) of Rule 3A, and Category 2 Sponsoring Members are all other eligible Netting Members.[43]

While Bank Netting Members are subject to certain capitalization requirements as Sponsoring Member applicants,[44] Category 2 Sponsoring Member applicants are instead subject to financial requirements that are greater than the financial requirements applicable in their capacity as Netting Members.[45] Moreover, these increased financial requirements do not solely relate to an applicant's capitalization, but instead are based on the applicant's anticipated use of the Sponsoring Service in relation to their financial condition. Thus, this tiered category structure created differing applicant criteria based on the type of entity seeking Sponsoring Member status.

This differentiated approach continues for ongoing Sponsoring Member requirements. For example, a Category 1 Sponsoring Member may be subject to an increase in its Required Fund Deposit, as calculated pursuant to Section 2(h) of Rule 3A, if it fails to meet the applicable capitalization requirements.[46] Alternatively, Section 2(h) of Rule 3A provides that Category 2 Sponsoring Members may be subject to a limit on the activity that they can submit through the Sponsoring Service if their VaR Charges, as calculated and collected pursuant to Rule 4, exceed their Netting Member Capital.[47]

The Sponsored Service has continued to grow since its implementation. As discussed above, FICC has conducted a review of its access models to consider whether (i) its existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution, and other factors, and (ii) this variation of treatment continues to be necessary and appropriate in furtherance of the requirements under Rule 17Ad–22(e) and other parts of the Act applicable to FICC.[48] In light of this review and the general experience FICC has acquired in overseeing the expansion of the Sponsored Service membership, FICC believes that now is the appropriate time to make further enhancements so that this service can facilitate broader access to clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants who may seek to use the Sponsored Service as Sponsored Members. Therefore, FICC believes it is appropriate to eliminate the two categories of Sponsoring Members and make all Sponsoring Members subject to the same eligibility and ongoing requirements that are currently applicable to Category 2 Sponsoring Members. In practice, this proposed rule change would therefore affect only Bank Netting Members that are or will apply to be Sponsoring Members by removing the above-mentioned capitalization requirements and instead applying to such Members (and therefore all Sponsoring Members) the activity limits and financial condition factors used today for Category 2 Sponsoring Members. More broadly, the proposal would create applicant and ongoing Sponsoring Membership parity among all Sponsoring Members and applicants, which in turn should give indirect participants a wider range of Sponsoring Members to consider should they choose to access GSD's central clearing services via this particular indirect access model. At the same time, the preservation and broader application of activity limits and financial condition monitoring will allow FICC to continue to manage the risks that could be presented by any activity cleared through the Sponsored Service.

First, the proposed changes would eliminate the capitalization requirements that Bank Netting Members must meet to be eligible Sponsoring Members applicants. This proposed change would therefore put Bank Netting Member applicants on equal footing with other types of Sponsoring Member applicants and would expand the availability of the Sponsored Service to additional Bank Netting Members. However, FICC does not believe this proposed change would increase the risks presented to it by Bank Netting Members' participation in the Sponsored Service as Sponsoring Members because FICC would continue to manage those risks through other existing risk management tools. For example, rather than apply capitalization requirements to every Bank Netting Member applicant, FICC would continue to have the authority, as it does today for other types of applicants, to impose greater and additional financial requirements on a Bank Netting Member applicant based on information available through the Sponsoring Member application and ongoing surveillance of the applicant as a Netting Member.[49] FICC is also able to use the Excess Capital Premium to manage instances where a Sponsoring Member presents heightened default risk because of lower capital levels.[50] Finally, as described more below, the proposal would impose upon Bank Netting Members the same activity limit used for other types of Sponsoring Members today, thereby giving FICC an additional risk management tool to address any risks that may arise because of a Bank Netting Member's capital levels.

Second, the proposed changes would eliminate FICC's right to increase the Required Fund Deposit of a Category 1 Sponsoring Member if it fails to meet the capitalization requirements, instead relying upon an activity limit under the

[41] Securities Exchange Act Release No. 51896 (June 21, 2005), 70 FR 36981 (June 27, 2005) (SR–FICC–2004–22).

[42] *See* Securities Exchange Act Release No. 85470 (Mar. 29, 2019) 84 FR 13328 (Apr. 4, 2019) (SR–FICC–2018–013) (creating two categories of Netting Members to be eligible to be Sponsoring Members, expanding the eligibility of the service to other types of Netting Members in addition to Bank Netting Members).

[43] *See id. See also* Rule 3A, Section 2, *supra* note 4.

[44] Under Section 2(a) of Rule 3A, Bank Netting Members applying to be a Sponsoring Member must (i) have equity capital of at least $5 billion, (ii) be ''Well-Capitalized'', as such term is defined in the Rules, and (iii) have a bank holding company that is registered under the Bank Holding Company Act of 1954, as amended and that such bank holding company also be ''Well Capitalized''. ''Well Capitalized'' is defined in Rule 1 to have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation. *Supra* note 4.

[45] *See* Section 2(b)(ii) of Rule 3A, *supra* note 4.

[46] *Supra* note 4.

[47] A ''VaR Charge'' is a component of the Required Fund Deposit and defined in Rule 1, and ''Netting Member Capital'' is defined in Rule 1 to mean ''Net Capital, net assets or equity capital as applicable, to a Netting Member based on its type of regulation''. *Supra* note 4.

[48] *See* 17 CFR 240.17Ad–22(e). *See supra* note 11.

[49] *See* Rule 3A, Section 2(b)(ii) (describing the factors that FICC may consider when determining whether to impose additional financial requirements on a Sponsoring Member), *supra* note 4. For the purposes of illustration only, such financial requirements could include, without limitation, additional reporting requirements, including reporting of parent company financials, or a higher minimum deposit to the Clearing Fund.

[50] *See* Rule 3, Section 14 (the Excess Capital Premium is an additional Clearing Fund deposit that may be required if a Member's capital levels drop below a threshold relative to its other margin requirements), *supra* note 4.

circumstances described in Section 2(h) of Rule 3A on all Sponsoring Members (including, as discussed above, those that are Bank Netting Members).[51] The activity limit, which currently only applies to Category 2 Sponsoring Members, restricts a Sponsoring Member from submitting additional activity into its Sponsoring Member Omnibus Account(s) if its capital levels exceed the sum of its VaR Charge component of the Clearing Fund.[52] Based upon its experience with the activity limit tool since it was first applied in 2019, FICC believes the activity limit has been an appropriate and effective risk management measure for its Sponsoring Members, and will continue to operate as such with the expanded application to Bank Netting Members. As noted earlier, Sponsoring Members are unconditionally liable to FICC for the obligations of its Sponsored Members under the Sponsoring Member Guaranty, and FICC relies on the financial resources of the Sponsoring Members to ensure that their funds and securities settlement obligations will still be met if the Sponsored Members default. Therefore, the activity limit aligns more neatly with this risk by giving FICC the proactive ability to mitigate Sponsoring Member exposures in prohibiting concerning participants from continuing to submit activity that they may not be able to cover. Like the changes to the eligibility requirements discussed above, this proposed change would also harmonize the conditions of membership across all types of Sponsoring Members, thereby increasing the potential pool of Sponsoring Member applicants to the benefit of both direct and indirect participants seeking expanded access to GSD's central clearing services.

To implement these proposed changes, FICC would make the following changes to the Rules: (1) delete the definitions of ''Category 1 Sponsoring Member'' and ''Category 2 Sponsoring Member'' from Rule 1; (2) revise the definition of ''Sponsoring Member'' in Rule 1 to remove reference to the two categories; and (3) amend Section 2(a), (b) and (h) of Rule 3A to remove the capitalization eligibility requirements currently applicable to Category 1 Sponsoring Members and clarify that the Category 2 Sponsoring Member eligibility requirements apply to all applicants to be a Sponsoring Member.

[51] *See* Rule 3A, Section 2(h), *supra* note 4.

[52] *See id. See supra* note 42.

b. Remove the QIB Requirement Applicable to Sponsored Members

FICC is proposing to remove the eligibility requirement that Sponsored Members either be ''qualified institutional buyers'' as such term is defined by Rule 144A under the Securities Act of 1933, or otherwise satisfy the financial requirements of such definition.[53] As noted above, FICC has progressively expanded the eligibility of both Sponsoring Members and Sponsored Members to facilitate greater access to this indirect participation model and based on its experience over time with the Sponsored Service believes this change is now appropriate.[54] Upon implementation of this proposal, the only qualification for a Person (as such term is defined in Rule 1) [55] applying to be a Sponsored Member would be that it is sponsored by at least one Sponsoring Member. Therefore, this proposed change would make the Sponsored Service available to additional market participants, thereby facilitating those firms with access to GSD's clearing services. Expanding eligibility to become a Sponsored Member supports the goals of the Treasury Clearing Rules to facilitate increased central clearing of transactions involving U.S. Treasury securities.[56]

FICC believes that making this change is appropriate because, as described above, FICC risk manages the Sponsored Service primarily at the Sponsoring Member level, not the Sponsored Member level. For example, a Sponsoring Member is responsible under Section 10 of Rule 3A for posting to FICC the Required Fund Deposit for its sponsored activity and, while Sponsored Members are principally liable to FICC for their settlement obligations, the Sponsoring Member is also required under Section 2 of Rule 3A to provide a guaranty to FICC for such obligations.[57] This means that, in the event one or more Sponsored Members does not satisfy its settlement obligations, FICC is able to invoke the Sponsoring Member Guaranty. Finally, pursuant to Section 2(d) of Rule 3A and Section 2 of Rule 3, Sponsoring Members may be required to provide to FICC reports or other information that FICC may require, including, for example, responses to annual or ad hoc due diligence requests.[58] As described above, FICC utilizes these due diligence requests to identify, monitor and manage the risks Sponsoring Members and their Sponsored Members may present to it. Where FICC identifies risks, whether via the due diligence process or otherwise, as discussed previously FICC will be able to impose on a Sponsoring Member supplemental financial requirements, an Excess Capital Premium charge (where applicable), and activity limits. Therefore, FICC believes that its existing risk management practices with respect to the Sponsored Service, which do not directly rely on the QIB requirement, continue to facilitate effective risk management of exposures created through the Sponsored Service.

To implement this proposed change, FICC would amend Section 3(a) of Rule 3A to remove the requirement that a Sponsored Member be either a ''qualified institutional buyer'' as defined by Rule 144A under the Securities Act of 1933 as amended, or otherwise satisfy the financial requirements of that definition.[59]

c. Clarify the Eligibility Criteria for Non-U.S. and Other Applicants To Be Netting Members

FICC is proposing to revise the Rules addressing Netting Member eligibility criteria for applicants that are either (1) not incorporated or formed in the United States, currently referred to in the Rules as ''Foreign Persons,'' [60] and (2) applicants, including Foreign Persons, that do not meet the eligibility criteria of one of the categories of Netting Member.

(i) Foreign Person Applicants. FICC is proposing to improve the transparency of the Rules regarding the eligibility of Foreign Persons to become Netting Members. In connection with these proposed changes, the proposal would eliminate the category for ''Foreign Netting Member'' and simplify the related defined terms.

[53] 17 CFR 230.144A. *See* Rule 3A, Section 3(a), *supra* note 4.

[54] *See* Securities Exchange Act Release No. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003) (removing a requirement that a Sponsored Member be a registered investment company, as such term is defined in Rules). *See also supra* note 42.

[55] *Supra* note 4.

[56] *See* page 12 of the Adopting Release (referring to the revisions to Rule 17Ad–22(e)(18) as being designed to ''bring the benefits of central clearing to more transactions involving U.S. Treasury securities, thereby reducing the overall systemic risk in the market''). *Supra* note 5.

[57] *See supra* note 4.

[58] *See supra* note 4.

[59] 17 CFR 230.144A.

[60] ''Foreign Person'' is currently defined in Rule 1 to mean ''a Person that is organized or established under the laws of a country other than the United States and does not include a foreign Bank Netting Member which is not deemed to be a Foreign Member pursuant to the definition of that term.'' *Supra* note 4. Proposed revisions to simplify this defined term would not change it substantively.

Currently, a Foreign Person applying to be a Netting Member must meet the eligibility criteria for a distinct Netting Member category, ''Foreign Netting Members.'' In contrast with the eligibility approach used for other Netting Member categories, the eligibility criteria for Foreign Netting Members in Section 3(a)(v) of Rule 2A do not specify or reference eligible types of legal entities. However, Section 4(b)(ii)(E) of Rule 2A does provide for minimum financial requirements and includes specific criteria for brokers, dealers and banks. This Section also provides FICC with the authority to set minimum financial requirements for other types of legal entities applying to be a Foreign Netting Member.

Section 3(b) of Rule 2A currently states that an entity can only be one category of Netting Member at a time.[61] A Foreign Person that, for example, is the foreign equivalent to a Registered Investment Company[62] would apply to be a Foreign Netting Member, and would be subject to the eligibility criteria, other membership qualifications, and ongoing minimum membership standards that are applicable to Foreign Netting Members. However, the Rules also contain specific eligibility criteria, other membership qualifications, and ongoing minimum membership standards for Registered Investment Company Netting Members. Thus, in this example it is unclear whether the applicant entity would only be subject to the Foreign Netting Member standards or would also have to satisfy the Registered Investment Company Netting Member standards. This ambiguity can have meaningful implications. For example, Registered Investment Company Netting Members are excluded from the requirement that Netting Members purchase common shares of The Depository Trust & Clearing Corporation, pursuant to Rule 49.[63] If a Registered Investment Company that is a Foreign Person applied, and was approved, to be a Foreign Netting Member, it would not be clear if this exclusion from Rule 49 should be applicable to this Foreign Netting Member applicant.

To address these instances of ambiguity, the proposed rule changes would eliminate the category of ''Foreign Netting Member'' and would expand the qualifications for each category of Netting Member to include the foreign equivalent of the same legal entity types, as determined by FICC in its sole discretion. For example, the qualifications to be an Insurance Company Netting Member would continue to include an insurance company, as such term is defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended,[64] and would now also include an equivalent of such an entity in a non-U.S. jurisdiction, as determined by FICC in its sole discretion and meets the qualifications applicable to a Foreign Person in Rule 2A. In making the determination of whether a Foreign Person is an equivalent legal entity to the domestic legal entities that qualify for a category of Netting Member, FICC would consider, for example, the applicant's business model and its regulatory framework and designated examining authority.

Thus, the proposal would then provide that a Foreign Person shall be eligible to apply to become a Netting Member if either (1) it qualifies for one of the existing categories of Netting Member, or (2) FICC determines that the applicant may apply in the same way as an applicant that does not qualify under an existing category of Netting Member, as described in greater detail below.

Foreign Persons that are eligible to apply to be a Netting Member would be subject to both the minimum membership standards of the applicable Netting Member category as well as the eligibility criteria currently applicable to Foreign Netting Members, currently set forth in Section 3(a)(v) of Rule 2A.[65] The proposed changes would also provide that, where an applicable Netting Member category is subject to membership qualifications that are inconsistent with the qualifications applicable to a Foreign Person, then the standards applicable to a Foreign Person shall apply. In some cases, this approach may lead to an outcome where a Foreign Person applicant remains subject to home jurisdiction requirements that are different from the requirements applicable to other Netting Members. FICC believes that this outcome is nevertheless acceptable because, as discussed further below in the section about Other Applicants, the Rules would still provide that FICC will continue to apply the membership standards that were designed specifically to address the risks that may be presented when an applicant is not domiciled in the U.S. and whose primary regulator is not U.S.-based.

In this way, the proposed changes would clarify that Foreign Persons may be eligible to be direct participants of FICC under any of the existing categories of Netting Members and, therefore, would facilitate access to GSD's clearance and settlement services through direct membership with FICC to these market participants.

To implement these proposed changes, FICC would amend the qualifications of each Netting Member category listed in Section 3(a) to include a foreign equivalent of the currently eligible legal entity types. The proposed changes would also move the eligibility criteria for Foreign Netting Members from Section 3(a)(v) of Rule 2A to a revised Section 3(b)(i) of Rule 2A. The proposed changes would remove the definitions of ''Foreign Member'' and ''Foreign Netting Member'' and revise the definition of ''Foreign Person'' in Rule 1. References to Foreign Netting Member would also be removed or replaced, as appropriate, in Section 4(b)(ii)(E) of Rule 2A and in Sections 2(f), 8(g) and 12(b)(i)(C) of Rule 3.

Because the defined term ''Foreign Member'' is currently only used in two places in the Rules, the proposed change to remove this term would simplify the Rules. Reference to ''Foreign Member'' would be removed from the definition of ''Foreign Person'' in the revisions to this definition described below. The other reference to ''Foreign Member'' in Section 7(g) of Rule 2A would be replaced with ''a Member that is a Foreign Person''.

In connection with these proposed changes, FICC is also proposing to move requirements that Foreign Persons applying to be a Netting Member and other applicants that are referred to as ''FFI Members'' [66] make certain financial representations and

[61] *Supra* note 4.

[62] ''Registered Investment Company'' is currently defined in Rule 1 to mean ''an Investment Company that is registered as such with the SEC'', where an ''Investment Company is currently defined in Rule 1 to have ''the meaning given that term in Section 3 of the Investment Company Act of 1940, as amended.'' *Supra* note 4. Proposed revisions to simplify this defined term would not change it substantively.

[63] *Supra* note 4.

[64] 15 U.S.C. 80a–2(a)(17).

[65] *See* Rule 2A, Section 3(a)(v) (providing that a person may be eligible to apply to be a Foreign Netting Member if it ''(i) has a home country regulator that has entered into a memorandum of understanding with the SEC regarding the sharing or exchange of information, and (ii) maintains a presence in the United States, either directly or through a suitable agent, that both has available individuals fluent in English who are knowledgeable in the Foreign Person's business and can assist the Corporation's representatives as necessary, and ensures that the Foreign Person will be able to meet its data submission, settlement, and other obligations to the Corporation as a Member in a timely manner.'') and Section 4(b)(ii)(E) (specifying the minimum financial requirements for an applicant to be a Foreign Netting Member).

[66] ''FFI Members'' are defined as ''any Person that is treated as a non-U.S. entity for U.S. federal income tax purposes. For the avoidance of doubt, FFI Member includes any Member that is a U.S. branch of an entity that is treated as a non-U.S. entity for U.S. federal income tax purposes.'' *Supra* note 4.

certifications. These requirements would be moved from Section 3(a)(v) of Rule 2A to Section 5(c) of Rule 2A, which currently describes membership application documents, where such certifications would be included. This proposed change would improve the clarity of the Rules by including this membership requirement in the same place as similar membership requirements.

Finally, FICC is proposing to remove the requirement that an entity can only be one category of Netting Member at a time, but would retain the statement that, if an applicant qualified for multiple Netting Member categories, FICC would determine the category of Netting Member for which that applicant would be considered. This statement would be included in Section 3(a) of Rule 2A, just prior to the list of qualifications for each category of Netting Member.

(ii) Other Applicants. The proposed rule changes would provide a framework for FICC to consider an applicant, including a Foreign Person, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories. The intent behind these proposed changes is to facilitate FICC's ability to provide access to GSD's clearing services to a broader and more diverse range of market participants in a timely and efficient manner and, therefore, would support FICC's compliance with its requirement to facilitate access to its clearance and settlement services.[67]

Section 3(a) of Rule 2A lists each category of Netting Member, which are defined by different types of eligible legal entities, for example, Bank Netting Members, Dealer Netting Members and Futures Commission Merchant Netting Members. FICC does not have the authority to consider applicants to be a Netting Member if the applicant does not meet the eligibility criteria of one of these Netting Member categories. Therefore, FICC is proposing to expand its authority to consider any applicant, including Foreign Persons, to be a Netting Member. FICC believes it is both appropriate and consistent with its requirements to facilitate access to its services to allow other legal entity types to apply to be a Netting Member.

The proposed rule change would first require that an applicant demonstrate to FICC that its business and capabilities are such that it could reasonably expect material benefit from direct access to FICC's services.[68] An applicant would demonstrate this through its responses to the application questionnaire and other initial application materials. Next, the proposed rule would provide that FICC would apply minimum membership standards to an applicant that it deems reasonable and appropriate. Such minimum standards would be developed by FICC based on information provided by or concerning the applicant and the applicant's risk profile. Such information would include, for example, (i) the applicant's business model, (ii) its regulatory framework and designated examining authority, (iii) its organizational structure and risk management framework, and (iv) its anticipated use of the Corporation's services. By describing the factors and information that FICC would consider in developing the applicant minimum standards, the proposed changes would require that FICC develop and apply minimum membership standards that are both objective and risk-based.

These rule changes would be added to new Section 3(b)(ii) of Rule 2A, following the proposed changes regarding applicants that are Foreign Persons, described above. In connection with these changes, the proposal would move a statement that any additional categories of Netting Member, including the applicable eligibility criteria and minimum membership standards, would be subject to approval of the Commission from Section 3(a)(x) to a new Section 3(c).

As noted above, these proposed changes would support FICC's compliance with its requirement to facilitate access to its clearance and settlement services. Following the adoption of the Treasury Clearing Rules, additional market participants will need to access FICC clearance and settlement services, either as direct Netting Members or as indirect participants. FICC cannot reliably predict which types of legal entities will apply for direct membership or predict the risk profiles of those entities in order to preemptively develop applicable qualifications and membership standards. Therefore, the proposed rule change would provide FICC with the necessary flexibility to consider any potential applicants, including legal entities that do not fit into its current Netting Member categories, through a framework that is consistent with the rules of its affiliate, NSCC.

On an annual basis, FICC will review and conduct an assessment of GSD's access models, in compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act.[69] In connection with this annual assessment, FICC would review the types and number of legal entities that have applied to be a Netting Member under the proposed provision over the prior 12 months. Based on that review, FICC would determine whether it would be appropriate to adopt, through a proposed rule change, a new category of Netting Member and the applicable qualifications and membership standards. FICC would address this annual review in its proposed amendments to the Clearing Agency Risk Management Framework, where the annual review of GSD access models would also be addressed.[70]

3. Improve Clarity of Public Disclosures Regarding Access Models and Membership Categories

The proposed revisions to the Rules would also simplify and, therefore, improve the transparency and clarity of how FICC discloses to the public its criteria and other requirements for GSD's different participation models and membership categories. Collectively, these proposed changes would improve market participants' understanding regarding the availability and the comparative tradeoffs across these services and, therefore, facilitate increased access to those services.

a. Create a Public Road Map for Access Models and Membership Types in Rule 2

First, the proposed changes would revise Rule 2 to provide a public road map for the types of available memberships and the different participation models. Rule 2 currently describes how FICC makes its services available to entities that are approved for membership, lists the different membership types (*i.e.,* Comparison-Only Members, Netting Members, Sponsoring Members) and identifies the different categories of Netting Member

[67] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[68] This proposed change would harmonize the Rules with the rules of NSCC, which includes the same language. *See* Addendum B, Section 1(A)(vi) of NSCC's Rules and Procedures, which provides that, if an applicant does not qualify as one of the legal entity types specified in that rule, it may qualify if it ''has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to [NSCC's] services.'' *Supra* note 27.

[69] 17 CFR 240.17Ad–22(e)(18)(iv)(C). Contemporaneously with this proposed rule change, FICC and its affiliates, NSCC and The Depository Trust Company, are proposing changes to the Clearing Agency Risk Management Framework to provide for the annual assessment and subsequent review of GSD's access models by the Board, as required by Rule 17Ad–22(e)(18)(iv)(C). *See supra* note 5.

[70] *Id.*

(*i.e.,* Dealer Netting Member, Bank Netting Member, Inter-Dealer Broker Netting Member). This Rule also references some of the other Rules that govern certain memberships and addresses the liability of Members for activity they process through FICC on behalf of entities that are not Members.

The proposed changes would expand Rule 2 significantly to outline the various participation models available to market participants that allow for both direct and indirect access to GSD's clearance and settlement services. This outline would include descriptions of the services available to each membership type and provide a public road map for where those services are described in other Rules. These proposed changes are designed to address one of the key findings from FICC's outreach to market participants, that its various participation models are not well understood.[71]

Section 1 of Rule 2 would be revised to include a statement that GSD's services may be available directly or indirectly through either the Sponsored Service or a relationship with an Agent Clearing Member.

Section 1 of Rule 2 would be revised to remove a reference to FICC's Board of Directors approving membership applications. As provided in Rule 44, action by the Corporation may include action by the Board or by another authorized person as may be designated by the Board from time to time. This proposed change would permit the Board to either retain the authority to approve these applications or authorize management to do so, consistent with Rule 44 and the Board's authority under the FICC By-laws. Specifically, the Board's authority to empower management with certain responsibilities originates in the FICC By-laws, which have been filed as a rule of FICC.[72] The FICC By-laws document the responsibilities of the Board in electing and appointing officers of FICC and prescribing and assigning to those officers their respective powers, authority and duties.[73] This revision would simplify the statement in Rule 2, consistent with Rule 44. Section 2 would list the different memberships that have direct access to GSD's services, which include Netting Members, CCIT Members, Funds-Only Settling Bank Members and Comparison-Only Members. Separate subsections would describe each of these membership types, including a general description of the types of firms that would qualify for these membership types and where those qualifications are described with more specificity in the Rules. These subsections would also generally describe which of GSD's services are available to each membership type and would identify the Rules where those available services are described in more detail. The subsection describing Netting Members would also include a description of the additional ways Netting Members may use GSD's services, as Agent Clearing Members in connection with the use of the Agent Clearing Service and Sponsoring Members in connection with the participation in the Sponsored Service.[74]

In connection with these changes, the proposal would also move a statement regarding the designation of different categories of Netting Members as either Tier One Netting Member or Tier Two Member from Rule 2A and move it to Rule 2.[75] Rule 2A describes eligibility criteria for different membership types and these designations are not eligibility criteria, but relate to how FICC's loss allocation provisions, described in Rule 4, apply to a Netting Member.[76] This proposed change would make these designations easy to locate by Netting Members or market participants considering a direct membership by including them in the Rule where the different membership types are described.

Section 3 of Rule 2 would be revised to describe FICC's two indirect participation models that are available to Sponsored Members utilizing the Sponsored Service and Executing Firm Customers utilizing the Agent Clearing Service. Like the other sections of the revised Rule 2, this Section 3 would clarify how a market participant may utilize one of these models to access FICC's clearance and settlement services as an indirect participant and would include a reference to the Rules that describe these indirect access models with more specificity.

The proposed changes would revise the existing statements in Rule 2 that describe the liability of Members who submit activity to FICC on behalf of entities that are not Members. These proposed changes would not alter that liability, but would improve the clarity of these statements, specifically by replacing reference to Members as being ''liable in principal'' to ''fully liable for the performance of all obligations, financial or otherwise . . . .'' This change would restate, without changing, the responsibility of Members with respect to activity submitted to FICC on behalf of other entities. By better explaining the Member's obligations and replacing the reference to principal liability, the proposed change would address any confusion regarding the Member's responsibility for a transaction away from FICC.

b. Simplify Definitions of Membership Categories and Other Related Definitions

The proposed rule changes would simplify the definitions of the different types of GSD membership, including the categories of Netting Members, and enhance the disclosures regarding eligibility qualifications for membership categories. By improving these statements and public disclosures in the Rules, the proposed changes would clarify the availability of different membership types and, therefore, improve the understanding of market participants regarding the availability of a direct clearing membership and of indirect participants in determining which of GSD's indirect, intermediated access models they prefer to use.

Simplify Definitions of Netting Member Categories. Currently, the definitions of each category of Netting Member in Rule 1 refer to Section 3 of Rule 2A, where the qualifications for each category of Netting Member are described. Each subsection of Section 2 of Rule 2A includes a statement that defines each category of Netting Member as an entity that is admitted to membership in the Netting System as that category of Netting Member pursuant to the applicable qualifications and whose membership has not been terminated. The proposed rule changes would move these definitions of each category of Netting Member from Rule 2A to the defined terms in Rule 1. By moving the terms into Rule 1, the proposed change would simplify the descriptions of eligibility criteria in Section 3 of Rule 2A.

These proposed rule changes would also remove defined terms that are used only once in the Rules and replace the uses of those defined terms with the actual definitions. Some of these defined terms are used in the criteria for different categories of Netting Member. For example, the Rules include a definition of ''Inter-Dealer Broker'', and

[71] *See supra* note 11.

[72] *See* Securities Exchange Act Release Nos. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08); 82917 (Mar. 20, 2018), 83 FR 12982 (Mar. 26, 2018) (SR–FICC–2018–002).

[73] *See* Sections 3.2 through 3.9 of the FICC By-laws, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/FICC-By-Laws.pdf.*

[74] *See* Rule 8 and Rule 3A, respectively, *supra* note 4.

[75] ''Tier One Netting Member'' and ''Tier Two Member'' are defined in Rule 1, *supra* note 4.

[76] *Supra* note 4.

this defined term is only used once in the Rules, in the qualifications to be an Inter-Dealer Broker Netting Member in Section 3 of Rule 2A. Therefore, the proposed changes would remove this defined term from the Rules and use the definition of an Inter-Dealer Broker in the eligibility criteria for that category of Netting Member, in Section 3(a)(iii) of Rule 2A. Similar changes would be made in connection with the relevant defined terms and eligibility criteria for Government Securities Issuer Netting Member and Insurance Company Netting Member. These proposed changes would provide clearer descriptions of the qualifications for different categories of Netting Member in Rule 2A, and would not require a reader to refer back to the definitions in Rule 1 to understand those qualifications.

Other examples of these proposed changes include deleting the defined terms for ''Registered Broker'' and ''Registered Government Securities Broker'', which are both only used in the definition of ''Broker'', and instead use the definitions of these terms in the definition of Broker. FICC is proposing to make similar changes to the definition of ''Dealer'' which currently includes the only uses of the defined terms for ''Registered Dealer'' and ''Registered Government Securities Dealer''.

The proposed changes would update the eligibility criteria for Futures Commission Merchant Netting Members to clarify that an applicant for this category of Netting Member must be a member, and subject to the regulatory supervision, of the National Futures Association. The Rules currently require that an applicant to this Netting Member category be a Futures Commission Merchant, as such term is defined in the Commodity Exchange Act and that it be registered with the Commodity Futures Trading Commission (''CFTC'').[77] Because any Futures Commission Merchant that is registered with the CFTC is also required to be a member of the National Futures Association,[78] the proposed rule change would just clarify, but would not add to, the qualifications for this category of membership.

Finally, the proposed rule changes would state in the introduction of Section 3(a) of Rule 2A that applicants can only be one category of Netting Member and that FICC would determine the appropriate category for applicants that meet the eligibility criteria for multiple categories. This limitation is currently in Section 3(b) of Rule 2A, at the end of the list of categories of Netting Member. The proposed change would move this requirement more prominently to the top of this Section.

Simplify Other Defined Terms. In connection with, and related to, the proposed changes described above to simplify the definitions of the different categories of Netting Member, the proposed rule changes would also revise other defined terms to improve the clarity and transparency of the Rules.

The proposed changes would revise the defined term for ''CCIT Member'' and move a statement in this definition that Registered Investment Companies are not eligible to be CCIT Members to Section 2 of Rule 3B, where the rest of the eligibility and qualifications for CCIT Members are described. Similarly, the proposed changes would move a statement from the definition of ''Funds-Only Settling Bank Member'', describing a requirement that these members be party to certain agreements, to Section 4 of Rule 13, where the requirements applicable to these members are described. These proposed changes would improve the transparency of the Rules by including all of the qualifications applicable to these different membership types in the same places in the Rules.

4. Other Corrections and Clarifications to the Rules

The proposed rule changes would make other revisions to correct, clarify and conform provisions of the Rules to improve their accuracy in describing GSD's services and improve the transparency of the Rules.

First, the proposed rule changes would revise the definition of ''Person'' to clarify that this term was not intended to include individuals (*i.e.,* natural persons). The proposed changes would also remove the defined term for ''Non-Member'' and replace this term in the Rules to use more descriptive terms appropriate to the context where the term is used. For example, Rule 15 would be revised to replace reference to ''Non-Member'' with the term ''customer'' in describing activity submitted to FICC by Repo Brokers. The proposed changes would also make immaterial, technical changes to simplify the definition of ''Member'' in Rule 1.

Finally, the proposed rule changes would amend the definition of ''Sponsoring Member'' in Rule 1, the first sentence of Section 4 of Rule 2A and Section 2 of Rule 3A to replace reference to the Board as being responsible for approving membership applications and related membership matters with reference to the Corporation, consistent with Rule 44. These changes would conform to the proposed changes being made to Rule 2, described above, to permit the Board to either retain the authority to approve these applications or authorize management to do so, consistent with Rule 44 and the FICC By-laws.

Implementation Timeframe

Subject to approval by the Commission, FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed change by an Important Notice posted to FICC's website.

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,[79] and Rules 17Ad–22(e)(18)(iii), (e)(18)(iv)(C), (e)(19) and (e)(23)(ii), each promulgated under the Act,[80] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions, as well as to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[81] As described in greater detail below, the proposed changes to redefine the correspondent clearing/prime broker services as the Agent Clearing Service and the other proposed changes to the disclosures in the Rules regarding membership types and access models would clarify and improve public understanding of the ways a market participant may access FICC's clearance and settlement systems, thereby facilitating increased access to those systems. The proposed changes to eliminate the two categories of Sponsoring Members, remove the QIB requirement for Sponsored Members, and clarify the framework for both Foreign Persons and other applicants to be Netting Members would facilitate broader access to FICC's clearance and settlement systems.

The collective impact of these proposed changes would be to permit an increase in diversity and scope of

[77] 7 U.S.C. 1(a)(28).

[78] 17 CFR 170.15(a).

[79] 15 U.S.C. 78q–1(b)(3)(F).

[80] 17 CFR 240.17Ad–22(e)(18)(iii), (e)(18)(iv)(C), (e)(19), and (e)(23)(ii).

[81] 15 U.S.C. 78q–1(b)(3)(F).

market participants able to utilize FICC's central counterparty services, which can reduce the costs of securities transactions through FICC's multilateral netting, its trade guaranty and centralized default management, and mitigate and manage counterparty risks. Therefore, the proposed changes would support FICC's compliance with Section 17A(b)(3)(F) of the Act by promoting the prompt and accurate clearance and settlement of securities through expanded access to its clearance and settlement systems.[82] In making changes that clarify, simplify, and potentially expand the universe of intermediaries and access models that are available to market participants, including indirect participants, the proposed changes also would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Rule 17Ad–22(e)(18)(iii) under the Act requires that FICC monitor compliance with its participant requirements on an ongoing basis.[83] The proposed rule changes would allow FICC to assess the risk profiles of its Netting Members, in their capacity as Agent Clearing Members, through the information Netting Members would provide when they apply to use the Agent Clearing Service and through the subsequent due diligence requests. The collection of this information, which would include, for example, information regarding the controls the Agent Clearing Member has in place to monitor and mitigate its risks, would allow FICC to monitor its Members' compliance with the requirements of participating in the Agent Clearing Service. The proposed rule changes to eliminate the two categories of Sponsoring Member would expand FICC's ability to set appropriate activity limits to all Sponsoring Members. The activity limits allow FICC to monitor the activity and, therefore, the risks that this activity may present to FICC. Therefore, these proposed rule changes support FICC's compliance with the requirements of Rule 17Ad–22(e)(18)(iii).[84]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, ensure that it has appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants.[85]

FICC has conducted a review of its existing access models that, as described above, included consideration of whether FICC's existing policies and procedures treat transactions differently based on the identity of the participant submitting the transaction, the fact that an indirect participant is a party to the transaction, the method of execution, and other factors and that included a survey of market participants.[86] Following this review, FICC believes that its existing direct and indirect participation models provide market participants with appropriate means to access its clearance and settlement services, including indirect participants. As described below, the proposed rule changes would clarify and, therefore, improve market participants' understanding of these participation models. Certain proposed changes would expand the availability of participation to more, and a wider variety of, market participants. Collectively, the proposed changes are designed to support FICC's continued compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act by enhancing the Rules in describing various means for accessing its clearance and settlement services, including those of indirect participants.

The proposed changes to re-name the correspondent clearing/prime broker services to a single Agent Clearing Service would better disclose to the public, through the Rules, the operation and availability of this indirect participation model, and the rights and obligations of both Netting Members that use this service and their customers, who use this service to indirectly access central clearing at FICC. As described above, the proposed changes to Rule 8 would more clearly define the service through a number of additional disclosures. Among other things, the proposed changes would describe how a Netting Member can apply to use this service as an Agent Clearing Member, specify the rights and obligations of Agent Clearing Members in their use of this service and define the transactions that are eligible to be cleared and settled through this service, in addition to addressing other key aspects of the service.

In this way, the proposed changes would provide a framework for Agent Clearing Members, their customers, and other market participants regarding how to access FICC's clearance and settlement services. By making these public disclosures clearer and more detailed, the proposed changes would improve market participants' understanding of the operation, availability, and comparative tradeoffs of this service, thereby facilitating access to FICC's clearance and settlement services for Executing Firm Customers as indirect participants.

The proposed rule changes to update the eligibility criteria for both direct and indirect membership are also designed to improve the availability of GSD membership to more, and a wider variety of, market participants. By eliminating the two categories of Sponsoring Members, FICC would apply the same eligibility criteria and conditions for continued membership to all Sponsoring Members, without applying different standards based on the identity of the participant. This proposed rule change would also make more Bank Netting Members eligible to apply to be a Sponsoring Member, improving access to this indirect participation model by expanding the potential universe of Sponsoring Member intermediaries. The proposal to eliminate the QIB requirement for Sponsored Members would permit market participants that did not meet this eligibility criteria to participate in FICC's Sponsored Service and, therefore, access its clearance and settlement systems as indirect participants. The proposed changes to provide a framework for how additional Netting Member applicants, including Foreign Persons, may be eligible to apply to be Netting Members would allow additional market participants to be considered for direct membership. These rule changes clarify the process FICC would follow in considering an applicant for direct membership and, therefore, facilitate broader access to clearance and settlement services.

Finally, by revising the Rules to include a roadmap for the different categories of membership and various participation models, and to clarify and simplify the descriptions of membership types, these proposed rule changes, like the changes described above, would improve market participants' understanding of the available means for accessing FICC's clearance and settlement services.

As described above, while FICC is not proposing to materially change its existing access models, it is proposing to further disclose to the public, through the Rules, the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD's services through these participation models. By doing so, the proposed changes would

[82] *Id.*

[83] 17 CFR 240.17Ad–22(e)(18)(iii).

[84] *Id.*

[85] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[86] *Supra* note 11.

lead to better understanding of the available methods for accessing FICC's clearance and settlement systems, including by indirect participants in support of its compliance with Rule 17Ad–22(e)(18)(iv)(C).[87]

Rule 17Ad–22(e)(19) under the Act requires that FICC identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.[88]

The proposed rule changes would describe the various ways FICC would identify, monitor and manage the risks that may be presented to it through the Agent Clearing Service. When a Netting Member applies to use this service as an Agent Clearing Member, FICC would first collect information through an application, which would include information regarding its customers, past and/or projected volumes of its customer activity, and its controls for monitoring and mitigating risks, including risks presented by those customers. FICC would also continue to require Agent Clearing Members to identify their Executing Firm Customers, provide FICC with a current LEI for any customers, and confirm such customers' agent clearing relationship with the Agent Clearing Member before submitting trades on their behalf. The proposed rule changes to Rule 8 would also affirm FICC's existing authority to request reports and other information from Netting Members, in their capacity as Agent Clearing Member, through annual and ongoing due diligence requests. As described above, these information requests are, and would continue to be, an important tool for FICC to identify and monitor the risks that arise from these indirect participation arrangements. As described above, FICC uses these risk profiles to determine when to take further risk management measures available under its Rules to manage any risks a Member may pose to it.

In this way, these proposed changes would support FICC's compliance with Rule 17Ad–22(e)(19) and the requirement that it identify, monitor, and manage the material risks that may arise from the Agent Clearing Service.[89]

Rule 17Ad–22(e)(23)(ii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.[90] As described in detail above, the proposed rule changes are collectively designed to improve the public disclosures, in the Rules, describing the different types of membership, different categories of Netting Member and different participation models available to market participants.

By revising Rule 8 to describe the Agent Clearing Service with greater clarity and specificity, the proposed rule changes would provide both Agent Clearing Members and their Executing Firm Customers with sufficient information regarding the rights and obligations of all parties using this service. By defining the process by which a Netting Member may apply to use the Agent Clearing Service, the operation of that service, and the rights and obligations of Agent Clearing Members, these additional disclosures would provide market participants with sufficient information to evaluate the risks, fees, and other costs they may incur through participation in this service.

For example, the proposed rule changes would specify in Section 5 of Rule 8 that the Agent Clearing Member is fully liable for the performance of all obligations, financial or otherwise, to FICC arising in connection with Agent Clearing Transactions. The proposed rule changes would also provide, in Section 3 of Rule 8, that nothing in the Rules prohibit an Agent Clearing Member from seeking reimbursement from an Executing Firm Customer for payments made by the Agent Clearing Member under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Executing Firm Customer.

The proposed rule changes to clarify the descriptions of the criteria and related requirements for how both Members and, indirectly, legal entities that are not Members, can access GSD's services also would support FICC's compliance with the requirements of Rule 17Ad–22(e)(23). These proposed rule changes would simplify and, therefore, clarify the criteria and related descriptions of the different models for accessing GSD's services. As described above, the proposed changes include adding a public road map for the different models for accessing GSD's services, simplifying the definitions of the different types of membership, and clarifying the eligibility criteria for different categories of Netting Members. These proposed changes are designed to enhance the ability of market participants to understand GSD's access models that are available, thereby allowing them to determine, whether as direct or indirect participants, how to access, offer, and price those models to obtain access to central clearing. In this way, the proposed rule changes would support FICC's continued compliance with the requirements of Rule 17Ad–22(e)(23).

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule changes described in this filing would promote competition by improving market participants' understanding of the different membership categories and various models for accessing its clearance and settlement services.

As stated above, while some of the proposed changes include enhancements to membership qualifications and use of indirect access models, in general, the proposed rule changes would not materially change how market participants can access GSD's services today. The proposed application process and ongoing due diligence requests that would be applicable to Agent Clearing Members are not currently required for use of the existing correspondent clearing/prime broker services. The proposed application process could prohibit a Netting Member from using the Agent Clearing Service if FICC determines, based on the information provided in the application, that the applicant does not, for example, have the proper risk management controls in place to submit trades to FICC on behalf of its customers. This could create a competitive disadvantage between such applicant and other Netting Members that are approved to use the Agent Clearing Service. The proposed due diligence requests could result in additional risk management measures, such as increased reporting obligations or Clearing Fund deposits, if FICC deems such measures appropriate to mitigate risks that are identified through the course of such due diligence. Such risk management measures could also create a competitive disadvantage between the Agent Clearing Members that are subject to those measures and those that are not.

However, FICC believes the application process and the due diligence information requests are important tools for FICC to identify and monitor the risks that arise from these indirect participation arrangements. FICC believes these proposed changes

[87] *Id.*

[88] 17 CFR 240.17Ad–22(e)(19).

[89] *Id.*

[90] 17 CFR 240.17Ad–22(e)(23)(ii).

are appropriate in allowing FICC to assess the risk profiles of its Netting Members either as applicants or in their capacity as Agent Clearing Members through the information they would provide when they elect to use the Agent Clearing Service and the subsequent due diligence requests. FICC also believes these proposed measures are necessary for it to comply with its requirements under Rule 17Ad–22(e)(19) under the Act, as described above.[91]

By providing Members and other market participants with more information regarding these different access models, the proposed changes would collectively promote competition by facilitating greater access to FICC's services by contemplating a more diverse and wider scope of market participants who could serve as intermediaries, thereby increasing the potential range of avenues by which indirect participants can seek to access GSD's clearing services. The proposed rule changes to eliminate the two categories of Sponsoring Members would also promote competition by applying the same eligibility criteria and ongoing risk management conditions to all Sponsoring Members. This proposed change and the proposal to eliminate the QIB requirement for Sponsored Members would promote competition further by permitting additional firms to participate in the Sponsored Service as either Sponsoring Members or Sponsored Members, respectively. The proposed rule changes to provide a clear framework for how Foreign Persons can apply to be Netting Members and for how FICC may consider applicants, including Foreign Persons, that do not meet the eligibility criteria for an existing category of Netting Member. As such, these proposed rule changes would facilitate greater access to FICC's clearance and settlement systems and promote competition in the relevant markets.

FICC does not believe the proposal to make technical corrections and other clarification changes to the Rules would impact competition. These changes are being proposed to ensure the clarity and accuracy of the Rules. They would not change FICC's current practices or affect Members' rights and obligations. As such, FICC believes the proposal to make technical, clarifying and conforming changes would not have any impact on competition.

[91] 17 CFR 240.17Ad–22(e)(19).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will 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 *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 SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2024–005 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–FICC–2024–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2024–005 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06446 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[92] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99824; File No. SR–EMERALD–2024–12]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify Certain Connectivity and Port Fees

March 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members [3] and non-Members; and (2) amend the monthly port fee for additional Limited Service MIAX Emerald Express Interface (''MEI'') Ports [4] available to Market Makers.[5] The Exchange has experienced ongoing increases in expenses in recent years. As discussed more fully below, the Exchange recently calculated annual aggregate costs of $15,469,330 for providing 10Gb ULL connectivity and $2,506,232 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup ongoing costs and increase in expenses set forth below in the Exchange's cost analysis. While the proposed fee changes are immediately effective, the Exchange notes that a version of the proposed fee changes has been effective since January 1, 2023 pursuant to the Exchange's initially filed this proposal on December 30, 2022 as SR–EMERALD–2022–38. On January 9, 2023, the Exchange withdrew SR–EMERALD–2022–38 to make a minor technical correction and resubmitted the proposal (the ''Initial Proposal'').[6] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (the ''Second Proposal'').[7] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (the ''Third Proposal'').[8] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (the ''Fourth Proposal'').[9] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with a revised proposal (the ''Fifth Proposal'').[10] Since a U.S. government shutdown was avoided, on October 2, 2023, the Exchange withdrew the Fifth Proposal and replaced it with a further revised proposal (the ''Sixth Proposal'').[11] On November 27, 2023, the Exchange withdrew the Sixth Proposal and replaced it with this further revised proposal (the ''Seventh Proposal'').[12] On January 25, 2024, the Exchange withdrew the Seventh Proposal and replaced it with a further revised proposal (the ''Eighth

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100. For purposes of Limit Service MEI Ports, Market Makers also include firms that engage in other types of liquidity activity, such as seeking to remove resting liquidity from the Exchange's Book.

[6] *See* Securities Exchange Act Release No. 96628 (January 10, 2023), 88 FR 2651 (January 17, 2023) (SR–EMERALD–2023–01).

[7] *See* Securities Exchange Act Release No. 97079 (March 8, 2023), 88 FR 15764 (March 14, 2023) (SR–EMERALD–2023–05).

[8] *See* Securities Exchange Act Release No. 97422 (May 2, 2023), 88 FR 29750 (May 8, 2023) (SR–EMERALD–2023–12).

[9] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97813 (June 27, 2023), 88 FR 42785 (July 3, 2023) (SR–EMERALD–2023–14).

[10] *See* Securities Exchange Act Release No. 98176 (August 21, 2023), 88 FR 58341 (August 25, 2023) (SR–EMERALD–2023–19). Due to the prospect of a U.S. government shutdown, the Commission suspended the Fifth Proposal on September 29, 2023. *See* Securities Exchange Act Release No. 98656 (September 29, 2023) (SR–EMERALD–2023–19).

[11] *See* Securities Exchange Act Release No. 98751 (October 13, 2023), 88 FR 72174 (October 19, 2023) (SR–EMERALD–2023–27).

[12] *See* Securities Exchange Act Release No. 99138 (December 11, 2023), 88 FR 87020 (December 15, 2023) (SR–EMERALD–2023–30).

Proposal'').[13] On March 11, 2024, the Exchange withdrew the Eighth Proposal and replaced it with this further revised proposal (the ''Ninth Proposal'').

The Exchange previously included a cost analysis in the Initial, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC (''MIAX Pearl'') (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX [14] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. The Exchange continues to propose fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

The cost analysis included in prior filings was based on the Exchange's 2023 fiscal year of operations and projected expenses. In its Initial Proposal filed on December 30, 2022, the Exchange committed to conduct an annual review after implementation of these fees. The Exchange recently completed its 2024 fiscal year budget process, which included its annual review of these fees and the projected costs to provide these services, based on its approved 2024 expense budget. Therefore, the Cost Analysis included in this proposal is based on the Exchange's 2024 fiscal year of operations and projected expenses. The Exchange believes it reasonable to now use costs from its 2024 fiscal year budget because they reflect the Exchange's current cost base. The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Consequently, these increased costs included in the 2024 budget result in a lower projected profit margin for 10Gb ULL connectivity and Limited Service MEI Ports than the profit margins included in prior filings that proposed the same fee levels for 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes it is reasonable and appropriate to now use expenses from its 2024 budget because those expenses are more recent and more accurately reflect the Exchange's current expenses and projected revenues for the 2024 fiscal year. Continuing to use 2023 budget numbers would result in the Exchange's Cost Analysis to be based on stale data which would not reflect the Exchanges most recent cost estimates and projected margins.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [15] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[16] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[17] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[18] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [19] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[20] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [21] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased

[13] *See* Securities Exchange Act Release No. 99475 (February 5, 2024), 89 FR 9223 (February 9, 2024) (SR–EMERALD–2024–03).

[14] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[15] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[16] *Id.*

[17] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[18] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[19] *Id.* at page 2.

[20] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[21] Order Denying Reconsideration, 2019 WL 2022819, at *13.

the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[22] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [23] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [24] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [25]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [26] and remanded for further proceedings consistent with its opinion.[27] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [28] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[29] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *NASDAQ* v. *SEC.*'' [30] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[31]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [32] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[33] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [34] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by

[22] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network) (the ''BOX Order''). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[23] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[24] *Id.*

[25] *Id.*

[26] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ---- 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[27] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[28] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[29] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[30] *Id.*

[31] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[32] *See supra* note 27, at page 2.

[33] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[34] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

competitive forces.[35] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[36] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[37] and $80,383,000 for 2021.[38] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[39] and $22,843,000 for 2021.[40] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[41] and $44,800,000 for 2021.[42] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[43] and $30,687,000 for 2021.[44] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[45] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[46]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[47] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates),[48] which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. There is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content

[35] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[36] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[37] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[38] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[39] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[40] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[41] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[42] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[43] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[44] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[45] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[46] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[47] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[48] *See, e.g.,* Cboe Fee Schedule, Page 4, Affiliate Volume Plan, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing that if a market maker or its affiliate receives a credit under Cboe's Volume Incentive Program (''VIP''), the market maker will receive an access credit on their BOE Bulk Ports corresponding to the VIP tier reached and the market maker will receive a transaction fee credit on their sliding scale market maker transaction fees) *and* NYSE American Options Fee Schedule, Section III, E, Floor Broker Incentive and Rebate Programs, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (providing floor brokers the opportunity to prepay certain non-transaction fees for the following calendar year by achieving certain amounts of volume executed on NYSE American).

. . .'',[49] this is not the reality experienced by exchanges such as MIAX Emerald. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[50] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act[51] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[52] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [53] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[54]

* * * * *

10Gb ULL Connectivity Fee Change

The Exchange proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks [55] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[56]

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data

[49] *See supra* note 23, at note 1.

[50] *See* Securities Exchange Act Release Nos. 94889 (May 11, 2022), 87 FR 29928 (May 17, 2022) (SR–EMERALD–2022–19); 94718 (April 14, 2022), 87 FR 23633 (April 20, 2022) (SR–EMERALD–2022–15); 94717 (April 14, 2022), 87 FR 23648 (April 20, 2022) (SR–EMERALD–2022–13); 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05); 94257 (February 15, 2022), 87 FR 9678 (February 22, 2022) (SR–EMERALD–2022–04); 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR–EMERALD–2021–43); 93776 (December 14, 2021), 86 FR 71983 (December 20, 2021) (SR–EMERALD–2021–42); 93188 (September 29, 2021), 86 FR 55052 (October 5, 2021) (SR–EMERALD–2021–31); (SR–EMERALD–2021–30) (withdrawn without being noticed by the Commission); 93166 (September 28, 2021), 86 FR 54760 (October 4, 2021) (SR–EMERALD–2021–29); 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR–EMERALD–2021–25); 92645 (August 11, 2021), 86 FR 46048 (August 17, 2021) (SR–EMERALD–2021–23).

[51] 15 U.S.C. 78f(b)(4).

[52] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[53] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[54] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[55] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[56] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Fee Schedule. *See* Fee Schedule, Section 4)c), *available at https://www.miaxglobal.com/markets/us-options/miax-options/fees* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the monthly port fee for Limited Service MEI Ports available to Market Makers.[57] The Exchange currently allocates two (2) Full Service MEI Ports [58] and two (2) Limited Service MEI Ports [59] per matching engine [60] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Market Makers were previously assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free (before the proposals to adopt a tiered fee structure).[61]

Limited Service MEI Port Fee Changes

The Exchange now proposes to amend the monthly fee per Limited Service MEI Port and increase the number of free Limited Service MEI Ports per matching engine from two (2) to four (4). Specifically, the Exchange will now provide the first, second, third and fourth Limited Service MEI Ports for each matching engine free of charge. For additional Limited Service MEI Ports after the first four ports per matching engine that are provided for free (*i.e.,* beginning with the fifth Limited Service MEI Port), the Exchange proposes to increase the monthly fee from $100 to $420 per Limited Service MEI Port per matching engine.[62]

Market Makers that elect to purchase more than the number of Limited Service Ports that are provide for free do so due to the nature of their business and their perceived need for numerous ports to access the Exchange. Meanwhile, Market Makers who utilize the free Limited Service MEI Ports do so based on their business needs.

The Exchange notes that it last proposed to increase its monthly Limited Service MEI Port fees in 2020 (other than the prior proposals to adopt a tiered fee structure for Limited Service MEI Ports),[63] and such increase proposed herein is designed to recover a portion of the ever increasing costs associated with directly accessing the Exchange.

The Exchange also proposes to make corresponding changes to the Definitions section of the Fee Schedule and the paragraph describing the cap on the number of Limited Service MEI Ports each Market Maker may receive in Section 5)d)ii) of the Fee Schedule to account for the proposed change to now provide the first four (4) Limited Service MEI Ports for free per matching engine. Accordingly, the Exchange proposes to amend the last sentence of the paragraph describing the fees for Limited Service MEI Ports in Section 5)d)ii) of the Fee Schedule to now state that Market Makers are limited to ten additional Limited Service MEI Ports per matching engine, for a total of fourteen Limited Service MEI Ports per matching engine.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [64] in general, and furthers the objectives of Section 6(b)(4) of the Act [65] 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 [66] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order [67] and the Staff Guidance,[68] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types,

[57] The Exchange notes that in its prior filings (the Initial, Second, Third, Fourth and Fifth Proposals), the Exchange proposed to adopt a tiered-pricing structure for Limited Service MEI Ports.

[58] The term ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[59] The term ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[60] The term ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option 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.

[61] Prior to the Initial Proposal, the Exchange increased the fees for both 10Gb ULL fiber connections and Limited Service MEI Ports beginning with a series of filings on October 1, 2020 (with the final filing made on March 24, 2021). *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07). Prior to that fee change, the Exchange provided Limited Service MEI Ports for $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. The Exchange then increased the fee to $100 per Limited Service MEI Port.

[62] As noted in the Fee Schedule, Market Makers will continue to be limited to fourteen Limited Service MEI Ports per Matching Engine. The Exchange also proposes to make a ministerial clarifying change to remove the defined term ''Additional Limited Service MEI Ports''. The Exchange proposes to make a related change to add the term ''Limited Service MEI Ports'' after the word ''fourteen'' in the Fee Schedule.

[63] *See supra* note 61.

[64] 15 U.S.C. 78f(b).

[65] 15 U.S.C. 78f(b)(4).

[66] 15 U.S.C. 78f(b)(5).

[67] *See supra* note 22.

[68] *See supra* note 23.

should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [69] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [70] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [71]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[72] and Rule 19b–4 thereunder,[73] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[74] which requires, among other things, that exchange fees be reasonable and equitably allocated,[75] not designed to permit unfair discrimination,[76] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[77] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[78] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $15,469,330 (or approximately $1,289,111 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $2,506,232 (or approximately $208,853 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its users (both Members and non-Members [79]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection. The Exchange also proposes to modify its Fee Schedule to amend the monthly fee for additional Limited Service MEI Ports and provide two additional ports free of charge for a total of four free Limited Service MEI Ports per matching engine to which each Member connects.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[80] The Cost Analysis

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] 15 U.S.C. 78s(b)(1).

[73] 17 CFR 240.19b–4.

[74] 15 U.S.C. 78f(b).

[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* note 23.

[79] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[80] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[81] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time.

All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (61.9% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to additional Limited Service MEI Ports (4.0%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (34.1%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity

[81] For example, MIAX Emerald maintains 12 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX maintains 24 matching engines.

and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 10Gb ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, is $1,497,964 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 28.9% of its overall Human Resources cost to offering 10Gb ULL physical connectivity).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% Of all
Human Resources	$6,440,638	$536,720	28.9
Connectivity (external fees, cabling, switches, etc.)	57,736	4,811	61.9
Internet Services and External Market Data	448,208	37,351	84.8
Data Center	949,073	79,089	61.9
Hardware and Software Maintenance and Licenses	890,310	74,193	50.9
Depreciation	2,147,438	178,953	61.0
Allocated Shared Expenses	4,535,927	377,994	51.5
Total	15,469,330	1,289,111	40.2

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤2.8%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including 10Gb ULL connectivity. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual

product's percentage allocation within that entire product group. For example, a decrease in 1Gb connectivity lines in 2024 versus 2023 will have an impact on the percentage allocation of costs to 1Gb lines in 2024 versus 2023, which will also impact the individual percentage allocation of costs to 10Gb ULL lines, within the entire product group. Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated a weighted average of 48% of each employee's time from the above group to 10Gb ULL connectivity.

The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees' time to 10Gb ULL connectivity (less than 18%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to 10Gb ULL connectivity, whether it is a sales person selling a connection, finance personnel billing for connectivity or providing budget analysis, or information security ensuring that such connectivity is secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 48% of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. options industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges and the Options Price Reporting Authority (''OPRA''). The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national

securities exchanges, market data providers or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. The internet services cost driver includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange includes external market data fee costs towards the provision of 10Gb ULL connectivity because such market data is necessary for certain services related to connectivity, including pre-trade risk checks and checks for other conditions (*e.g.,* re-pricing of orders to avoid locked or crossed markets and trading collars). Since external market data from other exchanges is consumed at the Exchange's matching engine level, (to which 10Gb ULL connectivity provides access) in order to validate orders before additional orders enter the matching engine or are executed, the Exchange believes it is reasonable to allocate an amount of such costs to 10Gb ULL connectivity.

The Exchange relies on various content service providers for data feeds for the entire U.S. options industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from OPRA, other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2024 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though, but for the Exchange, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, and MIAX Pearl Options allocated 84.8%, 71.3%, and 74.8, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to the Exchange and its affiliated markets due to the factors set forth under the first step of the 2024 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) the Exchange itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage it allocated to the internet Services and External Market Data cost driver is greater than its affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2024 budget process is lower than its affiliated markets.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (61.9%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[82] The Exchange notes that this allocation is less than MIAX Pearl Options by a significant amount, but slightly more than MIAX, as MIAX Pearl Options allocated 59.8% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 48.5% and 50.9%, respectively, to the same category of expense. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, MIAX Pearl Options is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Depreciation

All physical assets, software, and hardware used to provide 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL

[82] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl Options because, unlike the Exchange, MIAX Pearl Options maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl Options. This expense also differs in dollar amount among the Exchange, MIAX Pearl Options, and MIAX because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 61.0% of its allocated depreciation costs to providing physical 10Gb ULL connectivity.

The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the percentages the Exchange and its affiliate, MIAX, allocated to the depreciation of hardware and software used to provide 10Gb ULL connectivity are similar. However, the Exchange's dollar amount is lower than that of MIAX by approximately $35,508 per month due to two factors: first, MIAX has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading MIAX to have more hardware than software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[83] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10GBb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all physical connectivity on the Exchange. The Exchange then allocated 51.5% of the portion allocated to physical connectivity to 10Gb ULL connectivity. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 51.5% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to 10Gb ULL connectivity also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster 10Gb ULL connectivity than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance network connectivity, of which 10Gb ULL connectivity is a main contributor. The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which system networks can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 1,100,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 1,100,000 distinct trading products. These value add services are part of the Exchange's strategy for offering a high performance trading system, which utilizes 10Gb ULL connectivity.

The Exchange notes that the 51.5% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other core services.

* * * * *

Approximate Cost per 10Gb ULL Connection per Month

After determining the approximate allocated monthly cost related to 10Gb connectivity, the total monthly cost for 10Gb ULL connectivity of $1,289,111 was divided by the number of physical 10Gb ULL connections the Exchange maintained in December 2023 (102), to arrive at a cost of approximately $12,638 per month, per physical 10Gb ULL connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated

[83] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

markets based on set quantifiable criteria, *i.e.,* actual number of 10Gb ULL connections.

* * * * *

Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.7% of its overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Allocated annual cost [c]	Allocated monthly cost [d]	% Of all
Human Resources	$1,495,643	$124,637	6.7
Connectivity (external fees, cabling, switches, etc.)	2,643	220	2.8
Internet Services and External Market Data	14,965	1,247	2.8
Data Center	62,061	5,172	4.0
Hardware and Software Maintenance and Licenses	49,543	4,129	2.8
Depreciation	112,425	9,369	3.2
Allocated Shared Expenses	768,952	64,079	8.7
Total	2,506,232	208,853	6.5

[c] *See supra* note a (describing rounding of Annual Costs).
[d] *See supra* note b (describing rounding of Monthly Costs based on Annual Costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering Limited Service MEI Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers described by the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. As more fully described below and throughout this filing, this is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

The updated Cost Analysis using projected 2024 expenses caused some allocation percentages in this filing to differ slightly (≤1.6%) from past filings that relied on projected 2023 expenses. This is due to various reasons. For example, the slight differences in allocation percentage for the Human Resources cost driver is due to both changes in headcount in 2024 and also changes to the percentage of employee time allocated to these services based on changing projects and initiatives in 2024 versus 2023. For example, the Exchange recently hired a Head of Data Services whose time is entirely allocated to the market data cost driver. These types of changes in the Human Resources cost driver impact the final percentage amount of total cost allocated towards overall connectivity, including Limited Service MEI Ports. There are no changes to the overall percentage allocation amounts applied to the product groups (*e.g.,* network connectivity) for each of the non-Human Resources cost drivers in the current filing based on 2024 expense versus the prior 2023 filings. However, within each of those product groups, slight changes to the amount of usage of the individual products within that group (in 2024 versus 2023) will have an impact on the individual product's percentage allocation within that entire product group. For example, a decrease in Limited Service MEI Port usage in 2024 versus 2023 will have an impact on the percentage allocation of costs to those same Limited Service MEI Ports in 2024 versus 2023, which will also impact the individual percentage allocation of costs to other ports offered by the Exchange, within the entire product group (*e.g.,* FIX Ports, Full Service MEI Ports, Purge Ports, Clearing Trade Drop Ports, and FIX Drop Copy Ports). Despite these minor shifts in product usage and changes in headcount and employee mix which resulted in non-material changes in percentage allocation amounts, the Exchange applied the same rules and principles to its 2024 Cost Analysis versus its 2023 Cost Analysis.

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose

functions include providing Limited Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Limited Service MEI Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Limited Service MEI Ports. Senior level executives were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks integral to providing and maintaining Limited Service MEI Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost includes external fees paid to connect to other exchanges and cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to external market data. External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data costs towards the provision of Limited Service MEI Ports because such market data is necessary (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the NBBO and checking for other conditions (*e.g.,* halted securities).[84] Thus, since market data from other exchanges is consumed at the Exchange's Limited Service MEI Port level in order to validate orders, before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

The Exchange notes that the allocation for the internet Services and External Market Data cost driver is greater than that of its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 2.8% of its internet Services and External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports for the same cost driver. The allocation percentages set forth above differ because they directly correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Emerald Market Makers utilized 1,070 Limited Service MEI ports and MIAX Market Makers utilized 1,785 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure and internet Service), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

[84] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26).

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Limited Service MEI Ports in the third-party data centers where it maintains its equipment as well as related costs for market data to then enter the Exchange's system via Limited Service MEI Ports (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).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 2.8% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.1% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 260 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX and MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Depreciation

The vast majority of the software the Exchange uses to provide Limited Service MEI Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production

environment. Hardware used to provide Limited Service MEI Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.2% of all depreciation costs to providing Limited Service MEI Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Limited Service MEI Ports. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost driver was therefore narrowly tailored to depreciation related to Limited Service MEI Ports.

The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX, allocated to the depreciation cost driver for Limited Service MEI Ports differ by only 1.7%. However, MIAX's approximate dollar amount is greater than that of MIAX Emerald by approximately $8,773er month. This is due to two primary factors. First, MIAX has under gone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware that software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 9% of the overall cost for directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 8.7% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, as MIAX Emerald allocated 8.7% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.0% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For December 2023, MIAX Market Makers utilized 1,785 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for December 2023, MIAX Pearl Options Members utilized only 360 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.[85]

* * * * *

Approximate Cost per Limited Service MEI Port per Month

Based on projected 2024 data, the total monthly cost allocated to Limited Service MEI Ports of $208,853 was divided by the total number of Limited Service MEI Ports utilized by Members in December, which was 1,070 (and includes free and charged ports), resulting in an approximate cost of $195 per port per month (when rounding to the nearest dollar). The Exchange used the total number of Limited Service MEI Ports it maintained in December for all Members and included free and charged ports. However, in prior filings, the Exchange did not include the expense of maintaining the two free Limited Service MEI Ports per matching engine that each Member receives when the Exchange discussed the approximate cost per port per month, but did include the two free Limited Service MEI Ports in the total expense amounts. As described herein, the Exchange changed its proposed fee structure since past filings to now offer four free Limited Service MEI Ports per matching engine to which each Member connects. After the first four free Limited Service MEI Ports, the Exchange proposes to charge $420 per Limited Service MEI Port per matching engine, up to a total of fourteen (14) Limited Service MEI Ports per matching engine.

For the sake of clarity, if a Member wanted to connect to all 12 of the Exchange's matching engines and utilize the maximum number of Limited Service MEI Ports on each matching engine (*i.e.,* 14), that Member would have a total of 168 Limited Service MEI Ports (12 matching engines multiplied by 14 Limited Service MEI Ports per matching engine). With the proposed increase to now provide four Limited Service MEI Ports for free on each matching engine, that particular

[85] MIAX allocated a slightly lower amount (7.3%) of this cost as compared to MIAX Emerald (8.7%). This is not a significant difference. However, both allocations resulted in a similar cost amount (approximately $0.6 million for MIAX and $0.8 million for MIAX Emerald), despite MIAX having a higher number of Limited Service MEI Ports. MIAX Emerald was allocated a higher cost per Limited Service MEI Port due to the additional resources and expenditures associated with maintaining its recently enhanced low latency network.

Member would receive 48 free Limited Service MEI Ports (4 free Limited Service MEI Ports multiplied by 12 matching engines), and be charged for the remaining 120 Limited Service MEI Ports (168 total Limited Service MEI Ports across all matching engines minus 48 free Limited Service MEI Ports across all matching engines).

As mentioned above, Members utilized a total of 1,070 Limited Service MEI Ports in the month of December 2023 (free and charged ports combined). Using December 2023 data to extrapolate out after the proposed changes herein go into effect, the total number of Limited Service MEI Ports that the Exchange would not charge for as a result of this increase in free ports is 494 (meaning the Exchange would charge for only 576 ports) and amounts to a total expense of $96,330 per month to the Exchange ($195 per port multiplied by 494 free Limited Service MEI Ports).

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (48.1%) given their focus on functions necessary to provide 10Gb ULL physical connections. The salaries of those same personnel were allocated only 7.8% to Limited Service MEI Ports and the remaining 44.1% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 17.7% for 10Gb ULL connectivity or 17.7% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (4% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 29% of its personnel costs to providing 10Gb ULL and 1Gb connectivity and 6.7% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 35.7% Human Resources expense to provide these specific connectivity and port services. In turn, the Exchange allocated the remaining 64.3% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 64.2% of the Exchange's overall depreciation and amortization expense to connectivity services (61% attributed to 10Gb ULL physical connections and 3.2% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 35.8%) toward the cost of providing transaction services, membership services, other port services, 1Gb connectivity, and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes

to fees, and the Exchange commits to do so.

Projected Revenue [86]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $15,469,330. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $18,020,568. The Exchange believes this represents a modest profit of 14.2% when compared to the cost of providing 10Gb ULL connectivity services.

The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services will equal $2,506,232. Based on December 2023 data for Limited Service MEI Port usage and counting for the proposed increase in free Limited Service MEI Ports and proposed increase in the monthly fee from $100 to $420 per port, the Exchange would generate annual revenue of approximately $2,903,040. The Exchange believes this would result in an estimated profit margin of 13.7% after calculating the cost of providing Limited Service MEI Port services. The Exchange notes that the cost to provide Limited Service MEI Ports is higher than the cost for the Exchange's affiliate, MIAX Pearl Options, to provide Full Service MEO Ports due to the substantially higher number of Limited Service MEI Ports used by Exchange Members. For example, utilizing December 2023 data, MIAX Emerald Market Makers utilized 1,070 Limited Service MEI Ports compared to only 360 Full Service MEO Ports (Bulk and Single combined) allocated to MIAX Pearl Options members.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

The Exchange also notes that this the resultant profit margin differs slightly from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* the Exchange maintains only 12 matching engines while MIAX maintains 24 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by Nasdaq for its comparable 10Gb Ultra fiber connection ($13,500 per month for the Exchange vs. $15,000 per month for Nasdaq).[87] NYSE American charges even higher fees for its comparable 10GB LX LCN connection than the Exchange's proposed fees ($13,500 per month for the Exchange vs. $22,000 per month for NYSE American).[88] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

* * * * *

The Exchange operated at a cumulative net annual loss from the time it launched operations in 2019 through fiscal year 2021.[89] This was due to a number of factors, one of which was choosing to forgo revenue by offering certain products, such as low latency 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 does not believe that it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI

[86] For purposes of calculating projected 2024 revenue for 10Gb ULL connectivity, the Exchange used revenues for the most recently completed full month.

[87] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[88] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[89] Beginning with fiscal year 2022, the Exchange incurred a net gain of approximately $14 million. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007742.pdf.*

Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), 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—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple exchanges. The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[90] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

[90] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

Limited Service MEI Ports

The proposed changes to the monthly fee for Limited Service MEI Ports is not unfairly discriminatory because it would apply to all Market Makers equally. All Market Makers would now be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same monthly rate regardless of the number of additional Limited Service MEI Ports they purchase. Certain market participants choose to purchase additional Limited Service MEI Ports based on their own particular trading/quoting strategies and feel they need a certain number of connections to the Exchange to execute on those strategies. Other market participants may continue to choose to only utilize the free Limited Service MEI Ports to accommodate their own trading or quoting strategies, or other business models. All market participants elect to receive or purchase the amount of Limited Service MEI Ports they require based on their own business decisions and all market participants would be subject to the same fee structure and flat fee. Every market participant may receive up to four (4) free Limited Service MEI Ports and those that choose to purchase additional Limited Service MEI Ports may elect to do so based on their own business decisions and would continue to be subject to the same flat fee. The Exchange notes that it filed to amend this fee in 2020 and that filing contained the same fee structure, *i.e.,* a certain number of free Limited Service MEI Ports coupled with a flat fee for additional Limited Service MEI Ports.[91] At that time, the Commission did not find the structure to be unfairly discriminatory by virtue of that proposal surviving the 60-day suspension period. Therefore, the proposed changes to the fees for Limited Service MEI Ports is not unfairly discriminatory because it would continue to apply to all market participants equally and provides a fee structure that includes four free Limited Service MEI Ports for one monthly rate that was previously in place and filed with the Commission.

The Exchange believes that its proposed fee for Limited Service MEI Ports is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Limited Service MEI Ports (either directly or through a Service Bureau), and will minimize barriers to entry by now providing all Members with four, instead of the prior two, free Limited Service MEI Ports.[92] As a result of the proposed fee structure, a significant majority of Members will not be subject to any fee, and only seven Members will potentially be subject to a fee for Limited Service MEI Ports in excess of four per month, based on current usage. In contrast, other exchanges generally charge in excess of $450 per port without providing any free ports.[93] Even for Members that choose to maintain more than four Limited Service MEI Ports, the Exchange believes that the cost-based fee proposed herein is low enough that it will not operate to restrain any Member's ability to maintain the number of Limited Service MEI Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably less than competing exchanges charge.[94] Further, the number of assigned Limited Service MEI Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Limited Service MEI Ports.

The Exchange believes that providing four free Limited Service MEI Ports is fair and equitable, and not unfairly discriminatory because it will enable Members (and more Members than when the Exchange previously provided two free Limited Service MEI Ports) to access the Exchange on this basis without having to pay for Limited Service MEI Ports, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. The Exchange believes that four Limited Service MEI Ports is an appropriate number to provide for free because it aligns with the maximum number of such ports currently maintained by a substantial majority of Members. Based on a review of Limited Service MEI Port usage, 28 of 35 connected Members are not projected to be subject to any Limited Service MEI Port fees under the proposed fee. In determining the appropriate number of Limited Service MEI Ports to provide for free, the Exchange considered several factors. First, the Exchange believes that, with respect to Limited Service MEI Port usage, Members prefer at least two Limited Service MEI Ports, for redundancy purposes. Second, from a review of the number of Limited Service MEI Ports currently requested and assigned to each Member, the median number of ports per Member that utilizes Limited Service MEI Ports is four. Thus, the Exchange believes that having four ports appears to be reasonably sufficient for the majority of Members to access the Exchange. On that basis, the Exchange chose four Limited Service MEI Ports as the maximum number of ports for which it will not charge to access the Exchange. The Exchange notes that some Members use more Limited Service MEI Ports than other Members (and the four provided for free), which is driven by the nature and volume of the business they conduct on the Exchange, and the choices they make in segmenting that business across different Limited Service MEI Ports. Allowing for this expansive use of Exchange capacity represents an aggregate cost that the Exchange seeks to recover through charging for ports five and higher.

The proposed change is also designed to encourage Members to be efficient with their Limited Service MEI Port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing Limited Service MEI Ports. There is no requirement that any Member maintain a specific number of Limited Service MEI Ports and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate.

The Exchange assessed the proposed fee change's impact on all Members. The Exchange believes that the proposed fee change is fair and

[91] *See supra* note 61.

[92] The following rationale to support providing a certain number of Limited Service MEI Ports for free prior to applying a fee is similar to that used by IEX in 2020 proposal to do the same as proposed herein. *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07).

[93] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services (similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers); ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity; NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees; GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[94] Assuming a Member selects five Limited Service MEI Ports based on their business needs, that Member on MIAX Emerald would be charged only for the fifth Limited Service MEI Port and pay only the $420 monthly fee, as the first four Limited Service Ports would be free. Meanwhile, a Member that purchases five ports on NYSE Arca Options would pay $450 per port per month, resulting in a total charge of $2,250 per month. On Cboe BZX Options, that same member would pay $750 per port per month, resulting in a total charge of $3,750 per months for five ports. *See* NYSE Arca Options Fees and Charges, dated March 1, 2024, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* and Cboe BZX Options Fee Schedule *available at https://www.cboe.com/us/options/membership/fee_schedule/.*

equitably allocated across all Members. As a threshold matter, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, the Exchange assessed whether there would be any differences in the amount of the projected fee that correlates to the type and/or size of different Members. This assessment revealed that the number of assigned Limited Service MEI Ports, and thus projected fees, correlates closely to a Member's inbound message volume to the Exchange. Specifically, as inbound message volume increases per Member, the number of requested and assigned Limited Service MEI Ports increases. The following table presents data from December 2023 evidencing the correlation between a Member's inbound message volume and the number of Limited Service MEI Port assigned to the Member as of December 31, 2023.

Number of ports	Average daily message traffic	Total message traffic	Overall percentage of all message traffic for month
1–4	2,096,585,967	41,931,719,332	19.67
5 or more	8,559,796,282	171,195,925,646	80.33

Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Limited Service MEI Ports. For example, the seven Members that subscribe to five or more Limited Service MEI Ports and are subject to the proposed monthly fee on average account for 80.33% of December 2023 inbound messages over Limited Service MEI Ports. The 28 Members that, based on their December 2023 Limited Service MEI Port usage are not projected to be subject to any Limited Service MEI Port fees, on average account for only 19.67% of December 2023 inbound messages over Limited Service MEI Port. Overall, no Member experienced a fee increase as a result of the proposed fee change and increase in the number of free ports. Three Members experienced a modest and proportionate fee decrease. All other Members saw no change in fees as a result of the proposed changes. On balance, based on the above data, the Exchange believes that the proposed fee structure changes (including moving from two free ports to four free ports) is fair and equitably allocated across all Members, and the impact of such proposed fee structure changes is consistent among Members based on Exchange access and usage.

The Exchange believes that the variance between projected fees and Limited Service MEI Ports usage is not unfairly discriminatory because it is based on objective differences in Limited Service MEI Port usage among different Members. The Exchange notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires the Exchange to maintain sufficient Limited Service MEI Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, the Exchange's incremental aggregate costs for all Limited Service MEI Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, the Exchange believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Limited Service MEI Ports fees.

While Limited Service MEI Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to the Exchange. Further, Members with relatively higher inbound message volume also request (and are assigned) more Limited Service MEI Ports than other Members, which in turn means they account for a disproportionate share of the Exchange's aggregate costs for providing Limited Service MEI Ports.[95] Therefore, the Exchange believes it is not unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Limited Service MEI Port fees.

To achieve consistent, premium network performance, the Exchange must build and maintain a network that has the capacity to handle the message rate requirements of its heaviest network consumers during anticipated peak market conditions. The resultant need to support 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. This need also requires the Exchange to purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[96] Thus, as the number of connections per Market Maker increases, other costs incurred by the Exchange also increase, *e.g.,* storage costs, surveillance costs, service expenses.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose—to partially recover the Exchange's aggregate costs, encourage the efficient use of Limited Service MEI Ports, and align fees with Members' Limited Service MEI Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members will receive four free Limited Service MEI Ports and pay the same proposed fee per Limited Service MEI Ports for each additional Limited Service MEI Port. Each Limited Service MEI Port is identical, providing connectivity to the Exchange on identical terms. While the proposed fee will result in a different effective ''per unit'' rate for different Members after factoring in the four free Limited Service MEI Ports, the Exchange does not believe that this difference is material given the overall low proposed fee per Limited Service MEI Port. Because the first four Limited Service MEI Ports are free of charge, each entity will have a ''per unit'' rate of less than the proposed fee. Further, the fee is not connected to volume based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on the

[95] *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07) (justifying providing 5 ports for free and charging a fee for every port purchased in excess of 5 ports based on the higher message traffic of subscribers with increased number of ports).

[96] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

Exchange. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Limited Service MEI Ports an entity selects and not on any other distinction applied by the Exchange. While entities that send relatively more inbound messages to the Exchange may select more Limited Service MEI Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on the Exchange rather than application of the fee by the Exchange. Members can determine how many Limited Service MEI Ports they need to implement their trading strategies effectively. The Exchange proposes to offer additional Limited Service MEI Ports at a low fee to enable all Members to purchase as many Limited Service MEI Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Limited Service MEI Ports will pay a greater percentage of the total projected fees than is represented by their Limited Service MEI Port usage, the Exchange does not believe that the proposed fee is unfairly discriminatory. It is not possible to fully synchronize the Exchange's objective to provide four free Limited Service MEI Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Limited Service MEI Ports. As proposed, the Exchange is providing a reasonable increased number of Limited Service MEI Ports to each Member without charge. In fact, the Exchange proposes to provide more Limited Service MEI Ports for free by increasing the number of available Limited Service MEI Ports that are provided for free from two to four. Any variance between projected fees and Limited Service MEI Port usage is attributable to objective differences among Members in terms of the number of Limited Service MEI Ports they determine are appropriate based on their trading on the Exchange. Further, the Exchange believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover the Exchange's directly-related costs as described herein) mitigates any disparate impact.

Further, the fee will help to encourage Limited Service MEI Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[97] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[98] By encouraging Members to be efficient with their Limited Service MEI Ports usage, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused Limited Service MEI Ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase. Additionally, because the Exchange will continue not to charge connectivity testing and certification fees to its Disaster Recovery Facility or where the Exchange requires testing and certification, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.[99]

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of the Exchange Members to continue to connect to the Exchange, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

[97] 17 CFR 242.1000–1007.

[98] 17 CFR 242.1001(a).

[99] By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. *See, e.g.,* Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange operated at a cumulative net annual loss since its launch in 2019 through 2021 [100] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

[100] *See supra* note 89.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl Options.[101] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Lastly, the Exchange does not believe its proposed changes to the monthly rate for Limited Service MEI Ports will place certain market participants at a relative disadvantage to other market participants. All market participants would be eligible to receive four (4) free Limited Service MEI Ports and those that elect to purchase more would be subject to the same flat fee regardless of the number of additional Limited Service MEI Ports they purchase. All firms purchase the amount of Limited Service MEI Ports they require based on their own business decisions and similarly situated firms are subject to the same fees.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change and price increase will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As this is a fee increase, arguably if set too high, this fee would make it easier for other exchanges to compete with the Exchange. Only if this were a substantial fee decrease could this be considered a form of predatory pricing. In contrast, the Exchange believes that, without this fee increase, we are potentially at a competitive disadvantage to certain other exchanges that have in place higher fees for similar services. As we have noted, the Exchange believes that connectivity fees can be used to foster more competitive transaction pricing and additional infrastructure investment and there are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, one comment letter on the Third Proposal, one comment letter on the Fourth Proposal, one comment letter on the Fifth Proposal, one comment letter on the Sixth Proposal, one comment letter on the Seventh Proposal, and one comment letter on the Eighth Proposal all from the same commenter.[102] In their letters, the commenters from SIG seek to

[101] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See supra* notes 83–84. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[102] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, *and* letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024.

incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. In addition, one commenter states in their latest letter that ''the Exchanges are misleading in stating that their last increase in the 10Gb ULL connection was in 2021 while fully aware that the Exchanges have been charging members this increased rate since January 2023.'' [103] The Exchange has clarified the references to the 2021 fee increase, and acknowledges that a version of this proposed fee change has been in effect since January 2023, all legally pursuant to the currently effective process set forth in Section 19(b) of the Exchange Act. The Exchange also received comment letters from a separate commenter on the Sixth and Seventh Proposals.[104] The Exchange believes issues raised by each commenter are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenters are requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[105] and Rule 19b–4(f)(2) [106] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[103] *See* letter from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated March 1, 2024.

[104] *See* letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

[105] 15 U.S.C. 78s(b)(3)(A)(ii).

[106] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2024–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–EMERALD–2024–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2024–12 and should be submitted on or before April 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[107]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06451 Filed 3–26–24; 8:45 am]

BILLING CODE 8011–01–P

[107] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20232; LOUISIANA Disaster Number LA–20001 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Louisiana

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Louisiana dated 03/21/2024.

Incident: Severe or Extreme Drought.

Incident Period: 09/19/2023 through 12/05/2023.

DATES: Issued on 03/21/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lasalle, Lafayette, Lafourche, Lincoln, Livingston,

Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, Winn.

Contiguous Counties:

Arkansas: Union, Ashley, Chicot, Columbia, Lafayette, Miller

Mississippi: Walthall, Claiborne, Jefferson, Marion, Adams, Warren, Pike, Harrison, Pearl River, Wilkinson, Amite, Issaquena, Hancock

Texas: Panola, Jefferson, Marion, Sabine, Orange, Shelby, Harrison, Cass, Newton

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for economic injury is 202320.

The States which received an EIDL Declaration are Arkansas, Louisiana, Mississippi, Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–06441 Filed 3–26–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 20)]

Notice of Railroad-Shipper Transportation Advisory Council Vacancies

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of vacancies on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of vacancies on RSTAC for a small railroad representative and a large shipper representative. The Board seeks nominations for candidates to fill these vacancies.

DATES: Nominations are due on April 26, 2024.

ADDRESSES: Nominations may be submitted via e-filing on the Board's website at *www.stb.gov.* Submissions will be posted to the Board's website under Docket No. EP 526 (Sub-No. 20).

FOR FURTHER INFORMATION CONTACT: Gabriel Meyer at (202) 245–0150. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–47, 11101–24), the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07), as well as railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

The ICC Termination Act of 1995 (ICCTA), enacted on December 29, 1995, established RSTAC to advise the Board's Chair; the Secretary of Transportation; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads including car supply, rates, competition, and procedures for addressing claims. ICCTA instructs RSTAC to endeavor to develop private sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The members of RSTAC also prepare an annual report concerning RSTAC's activities. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC's 15 appointed members consist of representatives of small and large shippers, and small and large railroads. These members are appointed by the Chair. In addition, members of the Board and the Secretary of Transportation serve as ex officio members. Of the 15 appointed members, nine are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chair, and at least four of the voting members must be representatives of Class II or III railroads. The remaining voting member has traditionally been an at-large representative. The other six members—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but may participate in RSTAC deliberations.

Meetings of RSTAC are required by statute to be held at least semi-annually. RSTAC typically holds meetings quarterly at the Board's headquarters in Washington, DC, although some meetings are held virtually or in other locations.

The members of RSTAC receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses. Currently, RSTAC members have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States Government. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns,* 79 FR 47482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

Each RSTAC member is appointed for a term of three years. No member will be eligible to serve in excess of two consecutive terms. However, a member may serve after the expiration of his or her term until a successor has taken office.

Due to the expiration of two RSTAC members' terms, vacancies exist for a small railroad representative and a large shipper representative. Nominations for candidates to fill the vacancies should be submitted in letter form, identifying the names of the candidates, providing a summary of why the candidates are qualified to serve on RSTAC, and containing representations that the candidates are willing to serve as RSTAC members effective immediately upon appointment. Candidates may nominate themselves. The Chair is committed to having a committee reflecting diverse communities and viewpoints and strongly encourages nominations of candidates from diverse backgrounds. RSTAC candidate nominations should be filed with the Board by April 26, 2024. Members

selected to serve on RSTAC are chosen at the discretion of the Board's Chair.

Please note that submissions will be posted on the Board's website under Docket No. EP 526 (Sub-No. 20) and can also be obtained by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at *RCPA@stb.gov* or (202) 245–0238.

Authority: 49 U.S.C. 1325.

Decided: March 22, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2024–06502 Filed 3–26–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2327]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Unmanned Aircraft Remote Identification Message Elements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 22, 2023. The collection involves electronic information that is broadcast directly from certain unmanned aircraft, specifically standard remote identification unmanned aircraft and unmanned aircraft equipped with a remote identification broadcast module. The collection of this information in the remote identification message elements is necessary to comply with the FAA's statutory requirement to develop and implement standards for remotely identifying operators and owners of unmanned aircraft. The collection of this information will also provide airspace awareness to enable the FAA, national security agencies, and law enforcement entities to distinguish compliant airspace users from those potentially posing a safety or security risk.

DATES: Written comments should be submitted by April 26, 2024.

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: Benjamin Walsh by email at: *ben.walsh@faa.gov;* phone: 202–267–8233.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0783.

Title: Unmanned Aircraft Remote Identification Message Elements.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 22, 2023 (88 FR 81530). Regulations for the Remote Identification of Unmanned Aircraft were published on January 15, 2021, and are contained in 14 Code of Federal Regulations (14 CFR), part 89. Requirements for the operation of unmanned aircraft with remote identification are contained in part 89, subpart B. The Remote Identification rule requires unmanned aircraft with remote identification equipment to broadcast remote identification message elements directly from the unmanned aircraft using radio frequency spectrum in accordance with 47 CFR part 15, where operations may occur without a Federal Communications Commission (FCC) individual license. These unmanned aircraft include standard remote identification unmanned aircraft and unmanned aircraft equipped with remote identification broadcast modules.

A standard remote identification unmanned aircraft must be capable of broadcasting the following remote identification message elements:

(a) The identity of the unmanned aircraft consisting of:

(1) A serial number assigned to the unmanned aircraft by the person responsible for the production of the standard remote identification unmanned aircraft; or

(2) A session ID.

(b) An indication of the latitude and longitude of the control station.

(c) An indication of the geometric altitude of the control station.

(d) An indication of the latitude and longitude of the unmanned aircraft.

(e) An indication of the geometric altitude of the unmanned aircraft.

(f) An indication of the velocity of the unmanned aircraft.

(g) A time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output.

(g) An indication of the emergency status of the unmanned aircraft.

A remote identification broadcast module must be capable of broadcasting the following remote identification message elements:

(a) The identity of the unmanned aircraft consisting of the serial number assigned to the remote identification broadcast module by the person responsible for the production of the remote identification broadcast module.

(b) An indication of the latitude and longitude of the unmanned aircraft.

(c) An indication of the geometric altitude of the unmanned aircraft.

(d) An indication of the velocity of the unmanned aircraft.

(e) An indication of the latitude and longitude of the take-off location of the unmanned aircraft.

(f) An indication of the geometric altitude of the take-off location of the unmanned aircraft.

(g) A time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output.

The collection of this information in the remote identification message elements is necessary to comply with the FAA's statutory requirement to develop and implement standards for remotely identifying operators and owners of unmanned aircraft. The collection of this information will also provide airspace awareness to enable the FAA, national security agencies, and law enforcement entities to distinguish compliant airspace users from those potentially posing a safety or security risk.

The remote identification message elements that unmanned aircraft operators are required to broadcast under Part 89 are considered publicly available information. The remote

identification message elements broadcast directly from the unmanned can be received by anyone who has the appropriate equipment, such as a personal wireless device, that can receive broadcast messages.

Respondents: The collection of information through the broadcasting of message elements from a standard remote identification unmanned aircraft or remote identification broadcast module is entirely automatic. The collection uses automated, electronic, and related technological collection techniques. This framework makes it relatively simple and straightforward for individuals to comply with the broadcast requirements by operating unmanned aircraft that are standard remote identification unmanned aircraft or unmanned aircraft equipped with a remote identification broadcast module.

Frequency: Operators of unmanned aircraft with remote identification are required to broadcast the remote identification message elements addressed in this information collection on occasion (when the unmanned aircraft with remote identification is operated in the airspace of the United States).

Estimated Average Burden per Response: To transmit remote identification message elements, each remote pilot is required to operate either a standard remote identification unmanned aircraft or unmanned aircraft equipped with a remote identification broadcast module. The collection of information through the broadcasting of the remote identification message elements is entirely automatic, therefore there is no average burden associated with the broadcast of the remote identification message elements.

Estimated Total Annual Burden: The collection of information through the broadcasting of the remote identification message elements is entirely automatic, therefore there is no annual burden associated with the broadcast of the remote identification message elements.

Issued in Washington, DC, on March 22, 2024.

Marcus Cunningham,

Acting Manager, Emerging Technologies Division, AFS–700.

[FR Doc. 2024–06527 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2023–2554]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewal of an Information Collection: Operational Waivers for Small Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for the renewal of an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 4, 2024. The collection involves information about requests for waivers from certain operational rules that apply to small unmanned aircraft systems (sUAS). The FAA uses the collected information to make determinations whether to authorize or deny the requested operations of sUAS. The information collected is necessary to issue such authorizations or denials consistent with the FAA's mandate to ensure safe and efficient use of national airspace.

DATES: Written comments should be submitted by April 26, 2024.

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: Daniel Ridgeway by email at: *Dan.Ridgeway@faa.gov;* or phone at: (360) 605–9425.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0796.

Title: Operational Waivers for Small Unmanned Aircraft Systems.

Form Numbers: N/A (Online Portal).

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 4, 2024 (89 FR 501). The FAA is seeing increased complexity of small unmanned aircraft systems (sUAS) operation flying under 14 CFR part 107. Under 14 CFR 107.205, operators of small UAS continue to request waivers from certain operational rules. In 2018, the FAA updated and modernized the process for applying for such waivers by introducing the FAADroneZone website. These improvements have facilitated the process of collecting and submitting the information required as part of a waiver application. In 2021, recognizing the demand to expedite the integration of unmanned aircraft systems (UAS) into the National Airspace System (NAS), the FAA revised the regulatory framework for safely integrating UAS into routine NAS operations. The was accomplished by publishing the ''Operation of Small Unmanned Aircraft Systems Over People'' rule in January 2021, which permitted routine operations of small unmanned aircraft over people and at night under certain conditions. This change significantly decreased the waiver requests for such operations by over 55%. In order to process operational waiver requests, the FAA requires the operator's name, the operator's contact information, and information related to the date, place, and time of the requested small UAS operation. Additional information is required related to the proposed waiver and any necessary mitigations. The FAA will use the requested information to determine if the proposed UAS operation can be conducted safely. This information is necessary for the FAA to meet its statutory mandate of maintaining a safe and efficient national airspace. See 49 U.S.C. 40103, 44701 and 44807.

Respondents: sUAS 107 Waiver Applications: 3,565 per year.

Frequency: On occasion. For operational waivers requests, a respondent provides the information once, at the time of the request for a waiver. If granted, operational waivers may be valid for up to four (4) years.

Estimated Average Burden per Response: 0.65 hours per response.

Estimated Total Annual Burden: 2,317 hours.

Issued in Washington, DC, on March 22, 2024.

Daniel Ridgeway,

Aviation Safety Inspector, Flight Standards Service, Emerging Technologies Division (AFS–700).

[FR Doc. 2024–06530 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0023]

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for reinstatement of a previously approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for reinstatement of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 28, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0023 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jazmyne Lewis, (202) 366–2826, Office of Administration, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control: 2125–0628.

Background: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results. Below we provide FHWA's projected average estimates for the next three years:

Respondents: State and local governments, highway industry organizations, and the general public.

Frequency: Annually.

Estimated Average Burden per Response: The burden hours per response will vary with each survey; however, we estimate an average burden of 15 minutes for each survey.

Estimated Total Annual Burden Hours: We estimate that FHWA will survey approximately 16,000 respondents annually during the next 3 years. Therefore, the estimated total annual burden is 4,000 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 22, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–06499 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–48]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On December 26, 2023, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before April 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285; or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On December 26, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 89017. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Qualification and Certification of Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), later amended and re-codified by Public Law 103–272, 108 Stat. 874 (July 5, 1994), required FRA to issue regulations to establish any necessary program for certifying or licensing locomotive engineers. The collection of information is used by FRA to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers (DSLEs).

The collection of information is used by FRA to verify that railroads have established required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

On December 26, 2023, FRA published a 60-day **Federal Register** notice that reflected 23,969 total burden hours and 224,652 responses. *See* 88 FR 89017. Upon further evaluation, FRA has determined that 49 CFR 240.119(e)(3)(iii) does not identify any additional paperwork burden and only specifies the potential length of ineligibility when a person has been had their certification revoked. Additionally, FRA has removed the following sections as they were being counted twice: § 240.111, because the written responses for this requirement are already included under § 240.219; § 240.119(e)(3)(ii), because these notifications are already included under § 240.119(c); § 240.121, because medical examiner reports are already included under section § 240.207 (medical certificates); § 240.101, because material modifications are already included under § 240.103(h); and § 240.205, because data to an EAP counselor is already included under § 240.115 (prior safety data criteria).

For additional clarity, FRA is including the updated burden table for publication with this 30-day **Federal Register** notice.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 224,023.

Total Estimated Annual Burden: 23,851 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $2,362,843.

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rate	Total cost equivalent U.S.D (D = C * wage rates)
240.9—Waivers	784 railroads	2 waiver petitions	1 hour	2.00	$85.93	$171.86
240.101—Written certification program: new railroads.	5 new railroads	5 written programs	1 hour	5.00	85.93	429.65
240.103—Approval of design of individual railroad programs by FRA.	5 new railroads	5 program submissions	1 hour	5.00	85.93	429.65
—(b)(1)—RR provides a copy of a certification program submission or resubmission to the president of the labor organization representing employees simultaneously with filing with FRA.	62 railroads	62 copies	5 minutes	5.17	85.93	444.26
—(b)(2)—RR affirmative statement that it has served certification program copy to the president of the labor organization representing employees' labor unions.	62 railroads	62 copies	5 minutes	5.17	85.93	444.26
—(c)—RR employee comment on submission, resubmission or material modification of RR certification program.	62 railroads	62 comments	8 hours	496.00	85.93	42,621.28

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rate	Total cost equivalent U.S.D (D = C * wage rates)
—(h)—RR material modifications to program after initial FRA approval (formerly under (e)).	784 railroads	10 modified programs	10 minutes	1.67	85.93	143.50
240.105(c)—Written reports/determinations of DSLE performance skills.	784 railroads	10 written reports	30 minutes	5.00	123.41	617.05
240.109—Prior safety conduct data	17,667 candidates	25 responses	5 minutes	2.08	63.07	131.19
240.111—Driver's license data requests from chief of driver licensing agency of any jurisdiction, including foreign countries.	17,667 candidates	17,667 requests	10 minutes	2,944.50	85.93	253,020.89
—NDR match—notifications and requests for data.	784 railroads	177 notices, +177 requests.	5 + 5 minutes	29.50	85.93 63.07	2,197.75
240.111(g)—Notice to RR of absence of license	53,000 candidates	4 letters	5 minutes	0.33	63.07	20.81
240.111(h)—Duty to furnish data within 48 hours of being convicted or final State action on prior safety conduct as a motor vehicle driver's license operator.	784 railroads	100 communications	5 minutes	8.33	63.07	525.37
240.113—Notice to RR furnishing data on prior safety conduct—different RR.	17,667 candidates	353 requests, +353 responses.	5 + 5 minutes	58.84	85.93 63.07	4,383.58
240.115 (c) and (d)—RR temporary certification or recertification of locomotive engineer for 60 days after having requested the motor vehicle information specified in paragraph (h) of this section.	784 railroads	25 recertifications	5 minutes	2.08	85.93	178.73
(i)(2)—RR drug and alcohol counselor's request of employee's record of prior counseling or treatment.	17,667 candidates	400 requests	5 minutes	33.33	63.07	2,102.12
(i)(3)—Conditional certification based on recommendation by DAC of employee aftercare and/or follow-up testing for alcohol/drugs when person evaluated as not currently affected by an active substance abuse disorder.	17,667 candidates	100 conditional certifications /DAC recommendations.	1 hour	100.00	63.07	6,307.00
(i)(4)—RR employee is evaluated by DAC as having an active substance abuse disorder.	17,667 candidates	100 DAC evaluations	1 hour	100.00	63.07	6,307.00
240.117(i)(4)—Early grant or reinstatement of certificate that has been denied/revoked; records.	53,000 locomotive engineers.	400 trained/retrained records.	5 minutes	33.33	63.07	2,102.12
240.119(c)—Written records indicating dates that the engineer stopped performing or returned to certification service + compliance/observation test.	784 railroads	400 records	5 minutes	33.33	63.07	2,102.12
240.119(d)(3)—Self-referral to EAP re: active substance abuse disorder.	53,000 locomotive engineers.	150 self-referrals	5 minutes	12.50	63.07	788.38
240.119(e)(3)(i)—RR determination that prior alcohol/drug conduct requires a written determination that a period of ineligibility applies.	The burden for this requirement is covered under 240.119(c).					
240.121(e)—Criteria—vision/hearing acuity data—new railroads.	5 new railroads	5 copies	5 minutes	0.42	85.93	36.09
—(f)—Criteria—vision/hearing acuity data—not meeting standards—notice by employee.	784 railroads	10 notifications	5 minutes	0.83	63.07	52.56
240.129(b)—RR records engineer's service if stopped performing service before both an operational monitoring observation and an unannounced compliance test are completed in a calendar year.	53,000 locomotive engineers.	1,000 records	5 minutes	83.33	85.93	7,160.55
240.201/221—List of DSLEs	784 railroads	784 lists	5 minutes	65.33	85.93	5,613.81
—List of Qualified Locomotive Engineers	784 railroads	784 updated lists	5 minutes	65.33	85.93	5,613.81
240.201/223/301—Locomotive engineer's certificate.	53,000 candidates	17,667 certificates	5 minutes	1,472.25	85.93	126,510.44
240.207—Medical certificate showing hearing/vision standards are met:.	53,000 candidates	17,667 certificates	30 minutes	8,833.50	123.41	1,090,142.24
—Written determinations allowing person to meet lower threshold or person no longer needs to use corrective device such as glasses or hearing aids.	784 railroads	30 determinations	5 minutes	2.50	123.41	308.53
240.209/213—Written documentation of knowledge tests of RR rules and practices.	53,000 candidates	17,667 testing records retained.	1 minute	294.45	85.93	25,302.09
240.211/213—Written documentation of performance skills test.	53,000 candidates	17,667 testing records retained.	1 minute	294.45	85.93	25,302.09
240.215—Retaining info. supporting determination	784 railroads	17,667 records	5 minutes	1,472.25	85.93	126,510.44
240.219(a)—RR notification letter to employee of certification denial + employee written rebuttal.	17,667 candidates	90 letters and responses.	30 minutes	45.00	85.93	3,866.85
—RR denial decision	784 railroads	45 documents/records	2 minutes	1.50	85.93	128.90
240.229(3)(ii)—Joint operations—notice—not qualified.	321 railroads	184 employee calls	5 minutes	15.33	63.07	966.86
240.301(b)—Temporary replacement certificates valid for no more than 30 days.	784 railroads	600 replacement certificates.	30 minutes	300.00	85.93	25,779.00
240.303—Annual operational monitoring observation.	53,000 candidates	53,000 testing records retained.	1 minute	883.33	85.93	75,904.83

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rate	Total cost equivalent U.S.D (D = C * wage rates)
240.303—Annual unannounced operating rules compliance test.	53,000 candidates	53,000 testing records retained.	1 minute	883.33	85.93	75,904.83
240.305(c)—Engineer's notice of non-qualification to RR.	53,000 engineers or candidates.	100 notifications	5 minutes	8.33	63.07	525.37
—(d)—Relaying certification denial or revocation status to other certifying railroad.	1,060 engineers	2 letters	15 minutes	0.50	63.07	31.54
240.307(a–b)—Revocation of certification—notice to engineer of disqualification.	784 railroads	550 + 550 letters	1 + 1 hour	1,100.0	85.93 63.07	81,950.00
—(b)(4)—RR provision to employee of copy of written information and list of witnesses that it will present at hearing.	784 railroads	690 copies/list	5 minutes	57.50	85.93	4,940.98
—(b)(5)—RR determination on hearing record whether person no longer meets certification requirements of this part.	784 railroads	690 hearing determinations.	1 hour	690.00	85.93	59,291.70
—(b)(7)—RR creates/retains hearing records	784 railroads	690 hearings/records	4 hours	2,760.00	85.93	237,166.80
—(c)(11)(i)(ii)—RR written decision after close of hearing containing findings of fact and whether a revocable event occurred.	784 railroads	690 written decisions	30 minutes	345.00	85.93	29,645.85
—(c)(11)(iii)—RR service of written decision on employee and employee's representative.	784 railroads	690 copies	5 minutes	57.50	85.93	4,940.98
—(f)—Waiver of right to hearing under this section.	784 railroads	750 written waivers	5 minutes	62.50	63.07	3,941.88
240.307(i)–(j)—RR decision not to revoke certification.	784 railroads	50 records of decision	10 minutes	8.33	85.93	715.80
240.309–Railroad oversight responsibilities—annual review.	55 railroads	55 reviews	3 hours	165.00	85.93	14,178.45
Total	784 railroads	224,023 responses		23,851	0.00	2,362,843

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–06512 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–47]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On December 26, 2023, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before April 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285; or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On December 26, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 89020. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being

collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Training, Qualification, and Oversight for Safety-Related Railroad Employees.

OMB Control Number: 2130–0597.

Abstract: Regulations under 49 CFR part 243 set forth FRA's minimum training and qualification requirements for each category and subcategory of safety-related railroad employee, regardless of whether the employee is employed by a railroad or a contractor of the railroad. In 2014, FRA published a final rule establishing minimum training standards for all safety-related railroad employees, as required by the Rail Safety Improvement Act (RSIA) of 2008.[1] The final rule required each railroad or contractor that employs one or more safety-related employees to develop and submit a training program to FRA for approval and to designate the minimum training qualifications for each occupational category of employee. Additionally, the rule required most employers to conduct periodic oversight of their own employees and annual written reviews of their training programs to close performance gaps.[2]

FRA will use the information collected to ensure each employer—railroad or contractor—conducting operations subject to 49 CFR part 243 develops, adopts, submits, and complies with a training program for each category and subcategory of safety-related railroad employee. Each program must have training components identified so that FRA will understand how the program works when it reviews the program for approval. Additionally, FRA will review the required training programs to ensure they include initial, ongoing, and on-the-job training criteria; testing and skills evaluation measures designed to foster continual compliance with Federal standards; and the identification of critical safety defects and plans for immediate remedial actions to correct them.

On December 26, 2023, FRA published a 60-day **Federal Register** notice that reflected 66,565 total burden hours. *See* 88 FR 89020. Upon further evaluation, FRA has determined that the training programs requirement under § 243.101(a)(2) has already been completed. As a result, the associated paperwork burden has been removed, and the information collection now correctly reflects the estimated paperwork burden of 16,549 hours for this submission. For additional transparency FRA is including the updated burden table for publication with this 30-day **Federal Register** Notice.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 1,155 railroads/contractors/training organizations/learning institutions.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 163,875.

Total Estimated Annual Burden: 16,549 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,429,526.

CFR	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rates	Total cost equivalent in U.S. dollars (D = C * wage rates)
243.101(a)(2)—Training program required for each employer not covered by (a)(1) and subject to this part by May 1, 2021.	*The PRA burden associated with this requirement has been completed.*					
—(b) Submission by new employers commencing operations after Jan. 1, 2020, not covered by (a)(2).	10 new railroads/contractors.	10 training programs ...	20 hours	200.00 hours	$123.41	$24,682.00
—(e) Contractor's duty to validate approved program to a railroad (Revised requirement).	400 railroad contractors.	150 documents	15 minutes	37.50 hours	85.93	3,222.38
—(f) Railroad's duty to retain copies of contractor's validation documents (Revised requirement).	1,046 railroads/contractors.	1,046 copies	2 minutes ...	34.87 hours	85.93	2,996.38
243.103(d)—Training components identified in program; modifications to components of the training programs.	1,155 railroads/contractors.	10 modified training programs.	5 hours	50.00 hours	85.93	4,296.50
243.109(b)—Previously approved programs requiring an informational filing when modified.	155 railroads/contractors/learning institutions.	75 informational filings	8 hours	600.00 hours	85.93	51,558.00
—(c) New portions or substantial revisions to an approved training program.	10 railroads/contractors	10 revised training programs.	16 hours	160.00 hours	85.93	13,748.80
—(c) New portions or substantial revisions to an approved training program found nonconforming to this part by FRA—revisions required.	50 railroads/contractors	50 revised training programs.	8 hours	400.00 hours	85.93	34,372.00
—(d)(1)(i) Copy of additional submissions, resubmissions, and informational filings to labor organization presidents.	50 railroads/contractors	50 copies	10 minutes	8.33 hours	85.93	715.80
—(d)(1)(ii) Railroad statement affirming that a copy of submissions, resubmissions, or informational filings has been served to labor organization presidents.	228 railroads/contractors.	76 affirming statements	10 minutes	12.67 hours	85.93	1,088.73
—(d)(2) Labor comments on railroad training program submissions, resubmissions, or informational filings.	228 railroad labor organizations.	3 comments	30 minutes	1.50 hours	85.93	128.90

[1] Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162.

[2] 79 FR 66460.

CFR	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rates	Total cost equivalent in U.S. dollars (D = C * wage rates)
243.111(g)—Safety-related railroad employees instructed by training organizations or learning institutions—recordkeeping.	109 training organizations/learning institutions.	5,450 records	5 minutes	454.17 hours	85.93	39,026.83
—(h) Training organizations or learning institutions to provide student's training transcript or training record to any employer upon request by the student.	109 training organizations/learning institutions.	545 records	5 minutes	45.42 hours	85.93	3,902.94
243.201(b)—New employers operating after January 1, 2020, not covered by (a)(2), designation of safety-related employees by job category—lists.	10 new railroads/contractors.	10 designation lists	15 minutes	2.50 hours	85.93	214.83
243.201(c)—Training records of newly hired employees or those assigned new safety-related duties.	4,800 employees	4,800 records	15 minutes	1,200.00 hours	85.93	103,116.00
—(d)(1)(i) Requests for relevant qualification or training record from an entity other than current employer.	4,800 employees	250 record requests	5 minutes	20.83 hours	85.93	1,789.92
243.203(a)–(e)—Recordkeeping—Systems set up to meet FRA requirements—general requirements for qualification status records, accessibility.	10 railroads/contractors/training organizations/learning institutions.	10 record-keeping systems.	30 minutes	5.00 hours	85.93	429.65
—(f) Transfer of records to successor employer—If an employer ceases to do business and its assets will be transferred to a successor employer, it shall transfer to the successor employer all records required to be maintained under this part, and the successor employer shall retain them for the remainder of the period prescribed in this part.	1,155 railroads/contractors/training organizations/learning institutions.	3 railroads	30 minutes	1.50 hours	85.93	128.90
243.205(c)—Railroad identification of supervisory employees who conduct periodic oversight tests by category/subcategory.	746 railroads	100 identifications	5 minutes	8.33 hours	85.93	715.80
—(f) Notification by railroad of contractor employee non-compliance with federal laws/regulations/orders to employee and employee's employer.	300 contractors	360 (90 employee + 270 employer notices).	20 minutes (10 + 10).	60 hours (15.00 + 45).	85.93	5,155.80
—(i) and (j) Employer records of periodic oversight.	1,046 railroads/contractors.	150,000 records	5 minutes	12,500.00 hours	85.93	1,074,125.00
243.207(a)—Written annual review of safety data (Railroads with 400,000 annual employee work hours or more).	22 railroads	22 reviews	16 hours	352.00 hours	85.93	30,247.36
—(b) Railroad copy of written annual review at system headquarters.	22 railroads	22 review copies	5 minutes	1.83 hours	85.93	157.25
—(e) Railroad notification to contractor of relevant training program adjustments.	22 railroads	2 notifications	15 minutes	0.50 hour	85.93	42.97
243.209(a)–(b)—Railroad-maintained list of contractors utilized.	746 railroads	746 lists	30 minutes	373.00 hours	85.93	32,051.89
—(c) Railroad duty to update list of contractors utilized and retain record for at least 3 years showing if a contractor was utilized in last 3 years.	746 railroads	75 updated lists	15 minutes	18.75 hours	85.93	1,611.19
Total [3]	1,155 railroads/contractors/training organizations/learning institutions.	163,875 responses	N/A	16,549 hours		1,429,526

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–06510 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–06–P

[3] Totals may not add up due to rounding.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0002]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On January 25, 2024, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before April 26, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On January 25, 2024, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 89 FR 5084. FRA received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: State Highway-Rail Grade Crossing Action Plan.

OMB Control Number: 2130–0589

Abstract: Section 202 of the Rail Safety Improvement Act (RSIA) [1] of 2008 required the Secretary of Transportation [2] to identify the 10 States that have had the most-highway-rail grade crossing collisions, on average, over the prior three years, and to require those States to develop State highway-rail grade crossing action plans, within a reasonable period of time, as determined by the Secretary. Section 202 further provided that these plans must identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and must focus on crossings that have experienced multiple accidents or are at high risk for such accidents.

In 2020, FRA issued a final rule titled, State Highway-Rail Grade Crossing Action Plans,[3] to implement the Fixing America's Surface Transportation Act (FAST Act) requiring fifty [4] States and the District of Columbia to develop and implement highway-rail grade crossing action plans. The final rule also requires ten States that developed highway-rail grade crossing action plans, as required by RSIA and FRA's implementing regulation, to update their plans and submit reports to FRA describing actions they have taken to implement them.

FRA uses the collection of information to ensure that States meet the congressional mandate and devise and implement suitable plans to reduce/eliminate highway-rail grade collisions in their States. FRA reviews these crossing action plans and grade crossing action plan revisions to ensure that these plans include the following: (1) identify specific solutions for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations, (2) focus on crossings that have experienced multiple accidents or are at high risk for such accidents, and (3) cover a five-year period.

On January 25, 2024, FRA published a 60-day **Federal Register** notice that reflected 5,991 total burden hours and responses of 27. *See* 89 FR 5084. Upon further review, FRA has determined that the initial requirement to submit State Action Plans (SAPs) under 49 CFR 234.11(b) has already been completed. While all States have submitted their SAPs, States may voluntarily continue to provide updates to their approved plans which FRA will review and file. FRA also anticipates that additional clarification on some of these changes may be needed in order to support an upcoming report to Congress.[5] FRA's burden estimate reflects the time needed for States to respond to any follow up questions with respect to updated Plans or, potentially, approved plans that have not been updated as FRA prepares its report. As a result, the paperwork burden associated with this ICR has been significantly reduced from 5,111 hours to 880 hours for this submission, with the number of responses reduced from 27 to 17.

For additional clarity FRA is including the updated burden table for publication with this 30-day **Federal Register** notice.

Type of Request: Extension without change, (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A

Respondent Universe: 50 States + District of Columbia.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 17.

Total Estimated Annual Burden: 880 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $75,637.

[1] Public Law 110–432 (Oct. 16, 2008).

[2] *See* delegation to FRA Administrator at 49 CFR 1.89.

[3] *See* 85 FR 80648 (Dec. 14, 2020).

[4] In the published 60-day notice, the number of States required to develop and implement a highway-rail grade crossing action plan is shown as 40 States. In this 30-day notice, FRA has made a correction to the number of States from 40 to 50.

[5] Section 11401(c) of the FAST Act and section 22403 of the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021), require FRA to prepare a report to Congress that contains an analysis and evaluation of State highway-rail grade crossing programs, including strategies to improve highway-rail grade crossing safety that were identified by States in their SAPs.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent
	.....	(A)	(B)	(C = A * B)	(D = C * wage rates) [6]
234.11(b)—New State highway-rail grade crossing action plans.	*The requirement under this section has been completed; therefore, there is no paperwork burden associated with this section.*				
—(c)(1) Updated action plans (10 listed States in § 234.11(e))—Grouped into high, medium, and low burden plans.	10 States	2 plans (1 medium +1 low).	360.00 hours (240 + 120).	360.00 hours	$30,934.80
—(c)(2) Implementation reports (10 listed States in § 234.11(e))—Grouped into high, medium, and low burden reports.	10 States	2 reports (1 medium +1 low).	160.00 hours (120 + 40).	160 hours	13,748.80
—(f)(2) Notification to FRA by State or District of Columbia of another official to assume responsibilities described under § 234.11(e)(6).	50 States + District of Columbia.	2.70 notifications	5.00 minutes	0.22 hours	18.90
—(g) Review and approval	50 States + District of Columbia.	10 updated plans (5 medium + 5 low).	60 hours 48 +24)	360 hours (240 + 120).	30,934.80
—(g) FRA review and approval of State highway-rail grade crossing action plans: Disapproved plans needing revision (10 listed States in § 234.11(e)) Grouped into high, medium, and low revised plans.	*The estimated paperwork burden for this requirement is included above under (g), Review and approval.*				
Total	50 States + District of Columbia.	17 responses	N/A	880 hours	75,637

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–06511 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0046]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DUCHESS (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 26, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0046 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Search MARAD–2024–0046 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0046, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DUCHESS is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger sightseeing trips and charters.

—*Geographic Region Including Base of Operations:* California. Base of Operations: Emery Cove Marina, Emeryville, California.

—*Vessel Length and Type:* 44′ motor yacht

The complete application is available for review identified in the DOT docket as MARAD 2024–0046 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in

[6] The dollar equivalent cost is derived from the 2022 (STB) Full Year Wage A&B data series using employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (straight time plus 75 percent) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0046 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–06489 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0045]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CITY LIFE (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 26, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0045 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Search MARAD–2024–0045 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0045, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CITY LIFE is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters on Lake Michigan.
—*Geographic Region Including Base of Operations:* Illinois, Indiana, Wisconsin, Michigan, Florida. Base of Operations: Chicago, Illinois.
—*Vessel Length and Type:* 60.5′ motorboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0045 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0045 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–06488 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0044]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TRIPLE REEF (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 26, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0044 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0044 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0044, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel TRIPLE REEF is:

—*Intended Commercial Use of Vessel:* Requester intends to offer day charters on the Maine Coast.
—*Geographic Region Including Base of Operations:* Maine. Base of Operations: Southwest Harbor, Maine.
—*Vessel Length and Type:* 38′ motorboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0044 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your

comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0044 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–06490 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0043]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BEYOND BEYOND (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 26, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0043 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0043 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0043, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BEYOND BEYOND is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger charters.
—*Geographic Region Including Base of Operations:* Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, New Hampshire, Maine. Base of Operations: Newport, Rhode Island.
—*Vessel Length and Type:* 80.7′ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2024–0043 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English.

We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0043 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–06487 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2019–0098]

Lithium Battery Air Safety Advisory Committee; Notice of Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Lithium Battery Air Safety Advisory Committee (Committee).

DATES: The meeting will be held on April 25, 2024, from 9:00 a.m. to 5:30 p.m. EDT. Requests to attend the meeting must be sent by April 10, 2024, to the point of contact identified in the **FOR FURTHER INFORMATION CONTACT** section. Persons requesting to speak during the meeting must submit a written copy of their remarks to DOT by April 10, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than April 10, 2024.

ADDRESSES: The meeting will be held at Luminary Hotel & Co., 2200 Edwards Drive, Fort Myers, FL 33901. A remote participation option will also be available. Specific details on location and access to this meeting will be posted on the Committee website located at *https://www.phmsa.dot.gov/hazmat/rulemakings/lithium-battery-safety-advisory-committee.* The E-Gov website is located at *https://www.regulations.gov.* Mailed written comments intended for the Committee should be sent to Docket Management Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation. Telephone: 202–366–8553. Email: *lithiumbatteryFACA@dot.gov.* Any committee-related request should be sent to the email address listed in this section.

SUPPLEMENTAL INFORMATION:

I. Background

The Committee was created under the Federal Advisory Committee Act (FACA, 5 U.S.C. App. 2), in accordance with section 333(d) of the FAA Reauthorization Act of 2018 (Pub. L. 115–254).

II. Agenda

The meeting agenda will address the following duties of the Committee as specifically outlined in section 333(d) of the FAA Reauthorization Act of 2018:

(a) Facilitate communication among manufacturers of lithium batteries and products containing lithium batteries, air carriers, and the federal government.

(b) Discuss the effectiveness and the economic and social impacts of lithium battery transportation regulations.

(c) Provide the Secretary of Transportation with information regarding new technologies and transportation safety practices.

(d) Provide a forum to discuss Departmental activities related to lithium battery transportation safety.

(e) Advise and recommend activities to improve the global enforcement of U.S. regulations and the International Civil Aviation Organization (ICAO) Technical Instructions relevant to air transportation of lithium batteries, and the effectiveness of those regulations.

(f) Provide a forum for feedback on potential positions to be taken by the U.S. at international forums.

(g) Guide activities to increase awareness of relevant requirements.

(h) Review methods to decrease the risk posed by undeclared hazardous materials.

A final agenda will be posted on the Committee website at least 15 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section no later than April 10, 2024. To accommodate as many speakers as possible, time for each commenter may be limited. There will be five minutes allotted for oral comments from members of the public joining the meeting. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, PHMSA may conduct a lottery to determine the speakers. Speakers must submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to

Committee members no later than April 10, 2024. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time. Copies of the meeting minutes and committee presentations will be available on the Committee website. Presentations will also be posted on the E-Gov website in docket number [PHMSA–2019–0098], within 30 days following the meeting.

Written Comments: Persons who wish to submit written comments on the meetings may submit them to docket [PHMSA–2019–0098] in the following ways:

1. E-Gov Website: This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

2. Mail: Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Instructions: Identify the docket number [PHMSA–2019–0098] at the beginning of your comments. Note that all comments received will be posted without change to the E-Gov website, including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice on the E-Gov website before submitting comments.

Docket: For docket access or to read background documents or comments, go to the E-Gov website at any time or visit the DOT dockets facility listed in the **ADDRESSES** category, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on [PHMSA–2019–0098].'' The docket clerk will date stamp the postcard prior to returning it to you via U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to the E-Gov website, as described in the system of records notice (DOT/ALL–14 FDMS).

Issued in Washington, DC, on March 22, 2024.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–06528 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting: Community Development Advisory Board

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). The meeting will be open to the public who may either attend the meeting in person or view it as a live webcast. The meeting will be held at the U.S. Department of the Treasury in a room that will accommodate up to 50 members of the public on a first-come, first-served basis. The Advisory Board page on the CDFI Fund website is located at *www.cdfifund.gov/cdab.* On that page you will find a list of prior meeting dates as well as the date of the upcoming April 2024 meeting. The link to view the live webcast for the upcoming meeting is posted under the April 2024 meeting date.

DATES: The meeting will be held from 1:30 p.m. to 4:30 p.m. Eastern Time on Thursday, April 11, 2024.

ADDRESSES: The Advisory Board meeting will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Wednesday, April 3, 2024. Send statements electronically to *AdvisoryBoard@cdfi.treas.gov.* All written statements submitted by the deadline will be responded to with a simple acknowledgement of receipt.

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll-free number); or *AdvisoryBoard@cdfi.treas.gov.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board is not a governing board, and it does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. 1009 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be held in the Cash Room at the U.S. Department of the Treasury located at 1500 Pennsylvania Avenue NW, Washington, DC 20220, from 1:30 p.m. to 4:30 p.m. Eastern Time on Thursday. April 11, 2024. The room will accommodate up to 50 members of the public on a first-come, first-served basis.

Because the meeting will be held in a secure federal building, members of the public who wish to attend the

meeting must register in advance. The link to the online registration system is also posted under the date of the meeting at *www.cdfifund.gov/cdab.* The registration deadline is 11:59 p.m. Eastern Time on Monday, April 8, 2024. For entry into the building on the date of the meeting, each attendee must present his or her government issued ID, such as a driver's license or passport, which includes a photo.

Members of the public who wish to view the live webcast can access the link which will be posted under the date of the meeting at *www.cdfifund.gov/cdab.*

The Advisory Board meeting will include a report from the CDFI Fund Director on the activities of the CDFI Fund and discussions regarding the Advisory Board's two subcommittees.

Authority: 12 U.S.C. 4703.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–06486 Filed 3–26–24; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 21, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual

1. MORALES URBINA, Wendy Carolina (a.k.a. MORALES, Wendy Carolina; a.k.a. ''MORALES, Wendy''; a.k.a. ''URBINA, Wendy Carolina''), Managua, Nicaragua; DOB 28 May 1980; POB Nicaragua; nationality Nicaragua; citizen Nicaragua; Gender Female; National ID No. 001–280580–0021Y (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(i)(D) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua,'' as amended by Executive Order 14088 of October 24, 2022, ''Taking Additional Steps To Address the National Emergency With Respect to the Situation in Nicaragua,'' for being responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any transaction or series of transactions involving deceptive practices or corruption by, on behalf of, or otherwise related to the Government of Nicaragua or a current or former official of the Government of Nicaragua, such as the misappropriation of public assets or expropriation of private assets for personal gain or political purposes, corruption related to government contracts, or bribery.

Designated pursuant to section 1(a)(iii) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua,'' as amended by Executive Order 14088 of October 24, 2022, ''Taking Additional Steps To Address the National Emergency With Respect to the Situation in Nicaragua,'' for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

Dated: March 21, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06463 Filed 3–26–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5498–QA and 1099–QA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5498–QA, ABLE Account Contribution Information, and Form 1099–QA, Distributions from ABLE Accounts.

DATES: Written comments should be received on or before May 28, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–2262, Form Numbers: 5498–QA; 1099–QA, (ABLE Account Contribution Information; Distributions from ABLE Accounts), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to LaNita Van Dyke, at (202) 317–3009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: ABLE Account Contribution Information; Distributions from ABLE Accounts.

OMB Number: 1545–2262.

Form Numbers: 5498–QA; 1099–QA.

Abstract: Form 5498–QA, ABLE Account Contributions Information.

Public Law 113–295, ABLE Act of 2014 allows individuals and families to set money aside in this special account for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life, without impacting eligibility for other social service financial assistance programs such as Medicaid. Form 1099–QA allows these individuals and families to draw from the special account.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,000.

Estimated Time per Respondent: 11 min.

Estimated Total Annual Burden Hours: 3,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2024.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2024–06440 Filed 3–26–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Treasury Foreign Currency (TFC) Forms FC–1, FC–2 & FC–3

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before April 26, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Treasury Foreign Currency (TFC) Forms FC–1, FC–2 & FC–3.

OMB Control Number: 1505–0010.

Type of Review: Extension without change of a currently approved collection.

Description: Completion of Foreign Currency Forms FC–1, FC–2, and FC–3, to be filed by major market participants, is required under Title II of Public Law 93–110 (87 Stat. 352, 31 U.S.C. 5315), and implementing regulations.

The data collected on Foreign Currency Forms FC–1, FC–2 and FC–3 are used in connection with supplemental information from other sources to better understand the sources and nature of mobile capital flows which can have a significant impact on the functioning of the international monetary system. Aggregate data from these forms are published quarterly in the ''Foreign Currency Positions'' section of the Treasury Bulletin. Data reported by individual firms may be made available to other Federal agencies and to the Federal Reserve District Banks. Data are made available to the Federal Reserve System for analysis of market forces to aid in the formulation and implementation of U.S. monetary policy and operations in foreign exchange markets. In addition, data reported by individual banks may be made available to the Federal Reserve Board insofar as authorized by Section 11(a) of the Federal Reserve Act, as amended (12 U.S.C. 248(a)(2)).

Form: FC–1, FC–2 and FC–3.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: Form FC–1: 29 respondents. Form FC–2: 29 respondents. Form FC–3: 48 respondents.

Frequency of Response: Form FC–1: Weekly. Form FC–2: Monthly. Form FC–3: Quarterly.

Estimated Total Number of Annual Responses: 2,048.

Estimated Time per Response: Form FC–1: 48 minutes (0.8 hours). Form FC–2: 3 hours, 36 minutes (3.6 hours). Form FC–3: 8 hours.

Estimated Total Annual Burden Hours: 3,995.

Authority: 44 U.S.C. 3501 et seq.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–06467 Filed 3–26–24; 8:45 am]

BILLING CODE 4810–AK–P

UNIFIED CARRIER REGISTRATION PLAN

Board of Directors; Request for Nominations

AGENCY: Unified Carrier Registration Plan.

ACTION: Notice.

SUMMARY: The Unified Carrier Registration (UCR) Plan Board of Directors is requesting nominations of qualified individuals for all five of the motor carrier industry positions for appointment by FMCSA to the UCR Plan Board of Directors. The five vacancies have terms which expire on May 31, 2027. The nominees must be representatives from the motor carrier industry. At least one of the five motor carrier industry directors must be from a national trade association representing the general motor carrier of property industry and one of them must be from a motor carrier that falls within the smallest fleet fee bracket.

DATES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to fill these five vacancies in the Board of Directors of the Unified Carrier Registration Plan, along with accompanying resumes, must be received on or before May 10, 2024.

ADDRESSES: Nominations of or expressions of interest by qualified individuals to be considered by the FMCSA for appointment to the Board of the UCR Plan, along with accompanying resumes, may be received by any of the following methods—internet, regular mail, courier, or hand-delivery.

Mail, Courier, or Hand-Delivery: Unified Carrier Registration Plan, Attention: Matt Mantione, 529 14th Street NW, Suite 1280, Washington, DC 20045. Internet: *mmantione@plan.ucr.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

SUPPLEMENTARY INFORMATION:

Background: Section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59,119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a, entitled ''Unified carrier registration system plan and agreement.'' Under the UCR Agreement, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that are involved in interstate transportation register and pay certain fees. The UCR Plan's Board of Directors must issue rules and regulations to govern the UCR Agreement.

Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCR Agreement. Section 14504a(d)(1)(B) directed the Secretary of Transportation to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State Governments, and the motor carrier industry.

The Board also must recommend to the Secretary of Transportation annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCR Agreement. Section 14504a(d)(1)(B) provides that the UCR Plan's Board of Directors must consist of directors from the following groups:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement.

Motor Carrier Industry: Five directors must be from the motor carrier industry.

At least one of the five motor carrier industry directors must be from a national trade association representing the general motor carrier of property industry and one of them must be from a motor carrier that falls within the smallest fleet fee bracket.

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). This document serves as a notice from the UCR Plan Board of Directors soliciting nominations of and expressions of interest by qualified individuals who are interested in being considered by FMCSA for appointment to the Board as a representative of the motor carrier industry. At least one of the five motor carrier industry directors must be from a national trade association representing the general motor carrier of property industry and one of them must be from a motor carrier that falls within the smallest fleet fee bracket. The term of each of these appointments expires on May 31, 2027.

All nominations of or expressions of interest by qualified individuals received for the five soon to be vacant positions described above and submitted on or before May 10, 2024, will be forwarded to FMCSA. The authority to appoint an individual to fill each of the five vacant positions lies with Secretary of Transportation, which has been delegated to FMCSA.

Nominations and expressions of interest should indicate that the individual nominated or interested meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B). All applications must include a current resume.

The UCR Plan Board may, but is not required to, recommend to FMCSA the appointment of individuals from among the nominations and expressions of interest received. If the Board does make such recommendation(s), it will do so after consideration during an open meeting in compliance with the Government in the Sunshine Act that includes such recommendation(s) as part of the subject matter of the open meeting.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2024–06517 Filed 3–26–24; 8:45 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Methodology for Reimbursing Medical Services, Extended Care Services, Pharmaceuticals, and Durable Medical Equipment Not on Medicare Fee Schedules

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice is to inform the public about changes to rates contained within the Department of Veterans Affairs (VA) Fee Schedule. This fee schedule is currently used as part of the rate structure for certain agreements that VA uses to purchase community care under the Veterans Community Care Program (VCCP). Additionally, in this notice, VA will explain its use of non-reimbursable codes and industry standard business practices to ensure consistent adjudication of claims for services deemed non-billable or non-reimbursable.

DATES: The change will be effective March 27, 2024.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Policy Directorate, 16IVCEO3, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; 303–370–1637 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Prior to implementing VCCP, as required by section 101 of the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, VA would pay for community care pursuant to regulations found at 38 CFR 17.55 and 17.56. These regulations created a VA 75th Percentile Fee Schedule that was used to determine payment rates when there was no negotiated rate and no Medicare Rate. While the VA 75th Percentile Fee Schedule still exists and is used for paying for care provided under certain authorities (for example, 38 U.S.C. 1728), it is not used for making payments under VCCP, and is not the subject of this notice. Under VCCP, there are not specific payment rates assigned through statute, and the amount that VA pays for health care provided under this program is determined by the terms of the agreement the care was purchased under. While the statute does not set rates, 38 U.S.C. 1703(i) does indicate that VA must, when practicable, limit the amounts it pays to the amounts that would be paid under Medicare for the same services. Specifically, 38 U.S.C. 1703(i) states that, ''. . . to the extent practicable, the rate paid for hospital care, medical services, or extended care services under any provision in this title may not exceed the rate paid by the United States to a provider of services . . . or a supplier . . . under the Medicare program under title XI or title XVIII of the Social Security Act (42

U.S.C. 1301 *et seq.*), including section 1834 of such Act (42 U.S.C. 1395m), for the same care or services.'' While this section does not require VA to pay the same rates as Medicare, VA has determined that paying the Medicare rate when possible is the best policy. However, there are a number of services that VA provides to its beneficiaries through VCCP for which there is no Medicare rate. Therefore, VA developed the VA Fee Schedule (VAFS) to assign rates for codes that VA covers for which there is no Medicare rate.

B. Purpose

This notice is to inform the public about VA's methodology for calculating VAFS rates. The methodology used relies on a combination of VA claims data, Medicare policies and fee schedules, Medicaid fee schedules, TRICARE fee schedules, and benchmarking data to support fee schedule development. This notice will also explain VA's use of non-reimbursable codes and industry standard business practices to ensure consistent adjudication of claims for services deemed non-billable or non-reimbursable.

C. Description of VA Fee Schedule

In most of VA's contracts and agreements for the purchase of community care, the default payment rate is the Medicare Fee Schedule amount (outpatient) and the Medicare Prospective Payment System amount (inpatient and outpatient care in hospital settings). These rates are collectively referred to throughout this notice as the ''Medicare rate.'' VA analyzed its payments made under 38 U.S.C. 1703 and 1703A and found that the Medicare rate was paid for approximately 80% of line item claims. Pursuant to the terms of agreements VA uses to purchase community care, when there is no Medicare rate available, VA pays the lesser of the VAFS amount or billed charges. To determine the VAFS rates, VA gathers data from several different sources for each procedure code. These sources include Medicare's relative value unit (RVU) data, Medicare Administrative Contractor (MAC) rates, geographic location data, and geographic index adjustments. VAFS rates are determined using benchmark data from trusted sources in the health care payment analytics space and validated by either another benchmarking source or using other sources of supplemental data to support rate setting decisions. VA may deviate from this methodology when access to critical care services could be impacted by sudden, significant changes in payment rates. All VAFS releases are published at the link below: *https://www.va.gov/COMMUNITYCARE/revenue-ops/Fee-Schedule.asp.*

D. Methodology

Medicare fee schedules are reviewed to identify which procedure codes do not have associated rates. When sufficient rate setting data exists, most codes are placed onto the VAFS, unless they are considered Unlisted, Not Otherwise Classified (NOC), or other notation used for miscellaneous services. Codes deemed Unlisted, NOC, and other miscellaneous services do not have rates calculated due to their broad range of application and high variance in resources necessary to render services. This process occurs prior to each new VAFS release. VA's process includes setting a national base rate via benchmark or Medicare data sources, and, when applicable, applying an adjustment to account for geographical cost differences. Inclusion or exclusion of a procedure code from the VAFS is not an indication of coverage or lack of coverage.

VA analyzes Medicaid rates for the respective services to ensure rates are never priced lower than currently published Medicaid rates for the same or comparable procedure code. Additionally, VA analyzes 12 months of provider billing data to establish maximum rate values at the national 75th percentile of billed charges for each procedure code. This value is established by ranking billed charge amounts by providers and calculating the 75th percentile of the national billed charge amount. If the methods described below for assigning VAFS rates lead to a rate that is lower than the minimum amount set for a code, the VAFS rate will instead be that minimum amount. Similarly, if the methodologies below lead to a rate that would be higher than the maximum rate for that code, the VAFS rate for that code will be the maximum amount. By reviewing Medicaid rates, as well as historical VA claims data, to establish minimum and maximum rates for each code, VA is ensuring that its VAFS rates will be reasonably in line with industry standard pricing. Once the minimum and maximum rates have been determined, VA applies its methodology, based on the type of code and service, to determine the base VAFS rate.

When dealing with procedure codes designated by Medicare Status Indicators as Status I (Medicare uses another procedure code to report service), R (restricted coverage), or N (non-covered service), the rate calculation involves leveraging RVU included in the quarterly file published by the Centers for Medicare & Medicaid Services (CMS). RVUs are used to calculate rates for medical services and is the basis for Medicare's rate setting methodology. VA uses the same rate calculation based on the RVUs as Medicare to establish rates where RVU data exists for procedure codes not covered by Medicare. Since these codes are absent from Medicare fee schedules, rates for these procedure codes are set using CMS RVU calculation when available. This methodology is not applicable to each Status I, R, or N procedure code, and is only used when the applicable data is available from CMS. Medicare determines some procedure codes as ''Carrier Priced'' (Status C), meaning the MACs are responsible for setting rates based on their own methodologies. For many Status C codes (the term Carrier is synonymous with MAC), VA relies on rates from available MAC fee schedules to fill gaps for locations where the carriers have not established rates. VA analyzes the fee schedules from each MAC, and if rates are set in at least 28 localities, VA calculates the median rates among these MAC fee schedules. This median amount is used as the base rate which is then adjusted based on geographic locality to set rates where the procedure code is not included in MAC fee schedules. Not all Status C codes are assigned MAC rates due to limited data. When a code does not have enough assigned MAC rates available to make a median rate calculation, VA is unable to use this methodology to assign a rate for that code on the VAFS.

In many cases, VA relies on a benchmarking method to set rates, incorporating industry-proven and respected data comprised of Medicare, Medicaid, and commercial health insurance claims. VA has partnerships with multiple entities which supply provider payment data that VA uses in developing fee schedules. To improve the accuracy of benchmarking practices, VA employs multiple sources of benchmarking data to validate and confirm each value used in rate setting. VA analyzes the multiple years of benchmark data to build a robust dataset for analysis and application. FAIR Health, Truven MarketScan, and 5% Medicare Standard Analytical data are used as primary sources of benchmark data. As an additional benchmark source, VA considers the most recent TRICARE, Medicare Outpatient Prospective Payment System (OPPS), and Medicare Ambulatory Surgical Center (ASC) rates when available for

comparable VAFS procedure codes. VA sets rates up to 6 months in advance, requiring any data element used in rate setting methodology to be adjusted based on historical Medicare Economic Index values for each year the data lags the implementation date.

For many home health and community-based services, VA uses a method derived from the Medicare Home Health Prospective Payment System (PPS). These rates are calculated by converting Medicare Low Utilization Payment Adjustment (LUPA) rates into 15-minute rates based on national Medicare averages for the duration of visits. The labor-related share of rates is then adjusted by wage indices by geographic locality. VA also uses Medicaid fee schedules to develop rates for some community-based services, such as adult daycare, when application of the Medicare Home Health PPS and/or LUPA rates are not practicable.

VA also analyzes codes to determine if similar services exist. In some cases, the codes for these similar services provide a comparable rate that VA can use to set the base VAFS rate. Procedure codes are assessed based on their clinical similarity, resource utilization, and patient needs by medical coding subject matter experts to determine if the codes can be used interchangeably. If codes on the VAFS can be cross walked to comparable codes from either Medicare fee schedules or other benchmarking data sources, the similar procedure codes' rates may be set comparable to another for consistency in payment. Once VA establishes an association between comparable procedure codes or group of codes, it ensures the time, complexity, provider-type, wage-index adjustments, and other resources are factored into the rate for the procedure code. For instance, when a code has a rate for a procedure code with a description of ''per 15 minutes'' code, VA prices the ''per hour'' procedure code in alignment with the respective ''per 15 minutes'' code's rate.

Rates set with Medicare published RVUs have geographic adjustments built into the calculations based on geographic practice cost index (GPCI) for their locations. To ensure parity of geographic adjustments for codes without RVU data, the base rates for all other VAFS procedure codes are adjusted with an index to account for practice cost differences in each geographic locality. A geographic cost index is calculated for each locality using the Medicare fee schedule and applied to base rates to finalize each locality specific VAFS rate. This is done by taking the sum of all base rates from the Medicare Physician Fee Schedule (MPFS) as the denominator while using the sum of each locality's MPFS rates as the numerator to calculate the index. This index is then multiplied by the base rate for each procedure code to develop a locality-dependent rate. Consistent with Medicare, drugs and laboratory rates do not have geographic adjustments applied. Procedure codes representing these medications and pathology services have the same rate for each geographic locality.

E. Business Rules

VA is also developing guidance for non-reimbursable codes and industry standard business practices to institute additional cost controls, including but not limited to those associated with VA benefit exclusions, non-reimbursable codes (for reporting purposes only), bundled services or supplies, procedure codes representing experimental & investigational services providing no medical benefit, services outside of VA approved treatment plan guidance, or services considered not-medically necessary. VA reviews policies from CMS, private health insurance, and TRICARE to assess each code and decide if reimbursement is appropriate according to VA standards. This is a collaborative process incorporating payment policy, medical policy, and standard episode of care (SEOC) guidance to provide recommendations on which codes fall outside of proper reimbursement criteria. VA referrals will never include authorization for VA payment of certain non-reimbursable codes. Once codes are identified as potential additions, they are reviewed to assess the impact to both internal VA and provider operations. Codes identified as non-reimbursable will be denied. Decision dates will be included for each code to address potential changes over time if payment or medical policy changes in the future. It should be noted that this process of determining which codes can be paid, and under what circumstances, is distinct from VA's determinations of what services are clinically available as part of the VA Medical Benefits Package.

Future releases of VAFS will occur annually, with an option for more frequent updates to ensure provider payment is aligned with industry standards. As new procedure codes are added or discontinued quarterly, VA evaluates the need for the associated rates based on the absence of an available Medicare rate or Medicare payment mechanism and adds them as appropriate to VAFS to ensure cost controls are maintained.

TABLE OF METHODOLOGIES

Category	Methodology	Data sources
Status R, N, and I Codes with RVUs*.	Calculate rate based on RVUs and GPCI available through publicly available CMS resources.	CMS/Medicare Physician Fee Schedule Relative Value with Conversion Factor File (GPCI file used in calculations included in .zip).
Status C Codes	When data is sufficient (over 28 localities) and the variance coefficient of rates are low (less than 1.0) among localities, the base rate is set equal to median amounts from available MAC C-Status Fee Schedules and applied to localities where the rate is absent.	MAC Part B Fee Schedules (CGS Administrators, Noridian Healthcare Solutions, Novitas Solutions, Palmetto, First Coast Service Options, National Government Services, Wisconsin Physician Service Government Health Administrators).
Benchmarked Codes	Set base rate to benchmark national value of allowed amount.	FAIR Health, Truven MarketScan, Medicare Standard Analytical Files (5% Sample), Medicare OPPS rates, Medicare ASC rates, and TRICARE Fee Schedules.
Cross Walked Services.	Set rate equal to comparable procedure code or group of procedure codes with available rate or data, and if required, adjusted for time, complexity, or other payment adjusting factors.	All current Medicare Fee Schedules, Average Sales Price Drug Pricing file, Geriatric and Extended Care Fee Schedule, FAIR Health Medical Allowed Amount Benchmarks, Truven MarketScan Data, Medicare Standard Analytical Files (5% Sample), and TRICARE Fee Schedules.

TABLE OF METHODOLOGIES—Continued

Category	Methodology	Data sources
75th Percentile of Billed Charge.	Used only as a last effort to set rate when other methods are unapplicable. Base rate is set at the national 75th percentile of billed charges computed from the 12 prior months provider billing data.	12 months of VA provider payment data from VA Veteran claims processing systems.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 15, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–06431 Filed 3–26–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Wednesday,
No. 60 March 27, 2024

Part II

The President

Federal Register
Vol. 89, No. 60
Wednesday, March 27, 2024

Presidential Documents

Title 3—

The President

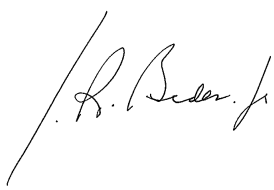
Notice of March 26, 2024

Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

On April 1, 2015, by Executive Order 13694, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States. On December 28, 2016, the President issued Executive Order 13757 to take additional steps to address the national emergency declared in Executive Order 13694.

These significant malicious cyber-enabled activities continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on April 1, 2015, must continue in effect beyond April 1, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13694.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 26, 2024.

[FR Doc. 2024–06720
Filed 3–26–24; 11:15 am]
Billing code 3395–F4–P

Presidential Documents

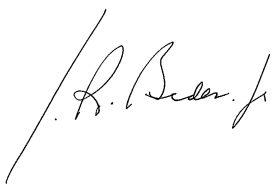
Notice of March 26, 2024

Continuation of the National Emergency With Respect to South Sudan

On April 3, 2014, by Executive Order 13664, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations.

The situation in and in relation to South Sudan continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 3, 2014, must continue in effect beyond April 3, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13664.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 26, 2024.

[FR Doc. 2024–06725
Filed 3–26–24; 11:15 am]
Billing code 3395–F4–P

Reader Aids

Federal Register

Vol. 89, No. 60

Wednesday, March 27, 2024

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 26, 2024

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.