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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2471 and 2472

Procedures of the Panel; Miscellaneous Requirements

AGENCY: Federal Service Impasses Panel, Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposed rule published in the **Federal Register** on February 16, 2024, without change. The final rule updates regulations of the Federal Labor Relations Authority's (FLRA) Federal Service Impasses Panel (FSIP) to establish revised methods by which the public may obtain specific forms from the FSIP, and then file, or formally submit, those forms and other documents during the course of FSIP proceedings.

DATES: This final rule is effective on April 25, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Moseley, Executive Director, Federal Service Impasses Panel, at *kmoseley@flra.gov* or at: 771–444–5765.

SUPPLEMENTARY INFORMATION: On February 16, 2024, in 89 FR 12287, the FLRA, including the FSIP, noted that it was consolidating its office space at 1400 K Street NW, Washington, DC, so that all of the offices that had been on the second floor of that address would be relocated on the third floor, joining the other FLRA offices already located there. Additionally, FSIP noted that, as it continued to move towards fully electronic case files, it wished to strongly encourage parties to file any permissible documents through the eFiling system, and to implement a requirement that allows in-person filing of forms or documents in FSIP matters by permission only, at an appointed time. FSIP also noted that, to the extent that moving to an ''appointment-only'' in-person filing system had any effect at all on parties' filing practices, it would promote eFiling. Further, the change would assist FSIP—which at the time had a staff of only four employees—in more easily managing staff-coverage issues, especially if budget constraints or other considerations prevented FSIP from filling vacancies as they arose.

Given these considerations, the FSIP proposed to amend 5 CFR parts 2471.2, 2471.5, 2472.3, 2472.5, and 2472.6 to update procedures for obtaining FSIP-specific forms and then filing or formally submitting those forms and other documents during the course of proceedings before the FSIP. The proposed amendments would promote eFiling, and conserve FSIP staff's time and efficiency by allowing staff members to accept documents after giving advance permission, and at specific appointed times. This arrangement would allow staff members to avoid remaining on constant stand-by for lengthy periods of time each week to accept forms and documents, thus losing the opportunity to perform other critical tasks.

The FLRA and FSIP invited written comments on the proposed rule, stating that any such comments must be received by March 18, 2024. The FLRA and FSIP received no comments, and thus adopt the rule as originally proposed.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FSIP has determined that the final rule will not have a significant impact on a substantial number of small entities, because this final rule applies only to Federal agencies, Federal employees, and labor organizations representing those employees.

Executive Order 12866, Regulatory Review

The FLRA is an independent regulatory agency and thus not subject to the requirements of E.O. 12866 (58 FR 51735, Sept. 30, 1993).

Executive Order 13132, Federalism

The FLRA is an independent regulatory agency and thus not subject to the requirements of E.O. 13132 (64 FR 43255, Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The final rule contains no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2471 and 2472

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR parts 2471 and 2472 as follows:

PART 2471—PROCEDURES OF THE PANEL

■ 1. The authority citation for part 2471 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

■ 2. Revise § 2471.2 to read as follows:

§ 2471.2 Request form.

A form is available for parties to use in filing either a request for consideration of an impasse or an approval of a binding arbitration procedure. Copies are available on the FLRA's website at *www.flra.gov* or, with advance permission only, from the

Office of the Executive Director, Federal Service Impasses Panel, Suite 300, 1400 K Street NW, Washington, DC 20424–0001. Telephone (771) 444–5762. Use of the form is not required, provided that the request includes all of the information set forth in § 2471.3.

■ 3. Amend § 2471.5 by revising paragraphs (a)(1), (b)(1), and (d) to read as follows:

§ 2471.5 Filing and Service.

(a) * * *

(1) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, unless the request is filed electronically as discussed below. A clean copy may be submitted for the original. Requests may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov,* or by registered mail, certified mail, regular mail, or commercial delivery. Requests also may be accepted by the Panel if transmitted to the facsimile machine of its office, the number of which is (202) 482–6674. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While requests may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444–5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

* * * * *

(b) * * *

(1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, with the exception of responses or documents filed simultaneously with the electronic filing of a request through use of the FLRA's eFiling system. Responses or documents may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov,* or by registered mail, certified mail, regular mail, or commercial delivery. Responses or documents also may be accepted by the Panel if transmitted to the facsimile machine of its office, the number of which is (202) 482–6674. A party submitting a response or document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While responses or documents may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444–5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service, or delivered in person after permission to do so is granted. Where service is made by electronic or facsimile transmission, the date of service shall be the date of transmission.

* * * * *

PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

■ 4. The authority citation for part 2472 continues to read as follows:

Authority: 5 U.S.C. 6131.

■ 5. Revise § 2472.3 to read as follows:

§ 2472.3 Request for Panel Consideration.

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available on the FLRA's website at *www.flra.gov* or, with advance permission only, from the Office of the Executive Director, Federal Service Impasses Panel, Suite 300, 1400 K Street NW, Washington, DC 20424–0001. Telephone (771) 444–5762. Fax (202) 482–6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

■ 6. Revise § 2472.5 to read as follows:

§ 2472.5 Where to file.

Requests to the Panel provided for in this part must either be filed electronically through use of the FLRA's eFiling system on the FLRA's website at *www.flra.gov,* or be addressed to the Executive Director, Federal Service Impasses Panel, Suite 300, 1400 K Street NW, Washington, DC 20424–0001. All inquiries or correspondence on the status of impasses or other related matters must be submitted by regular mail to the street address above, by using the telephone number (771) 444–5762, or by using the facsimile number (202) 482–6674.

■ 7. Amend § 2472.6 by revising paragraphs (a)(1), (b)(1), and (d) to read as follows:

§ 2472.6 Filing and service.

(a) * * *

(1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel unless the request is filed electronically as discussed below. A clean copy may be submitted for the original. Requests may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov,* or by registered mail, certified mail, regular mail, or commercial delivery. Requests also may be accepted by the Panel if transmitted to the facsimile machine of its office, the number of which is (202) 482–6674. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While requests may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444–5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

* * * * *

(b) * * *

(1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel, with the exception of responses or documents that are filed simultaneously with the electronic filing of a request for Panel consideration. A clean copy may be submitted for the original. Responses or documents may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov,* or by registered mail, certified mail, regular mail, or commercial delivery. Responses or documents also may be accepted by the Panel if transmitted to the facsimile

machine of its office, the number of which is (202) 482–6674. A party submitting a response or document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While responses or documents may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444–5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service, or delivered in person after permission to do so is granted. Where service is made by electronic or facsimile transmission, the date of service shall be the date of transmission.

* * * * *

Approved: March 20, 2024.

Thomas Tso,

Solicitor, Federal Register Liaison.

[FR Doc. 2024–06370 Filed 3–25–24; 8:45 am]

BILLING CODE 7627–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21, 50, and 52

[NRC–2023–0167]

Regulatory Guide: Evaluating Deviations and Reporting Defects and Noncompliance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 1.234, ''Evaluating Deviations and Reporting Defects and Noncompliance.'' This RG describes methods that the staff of the NRC considers acceptable for complying with the provisions of NRC regulations.

DATES: Revision 1 to RG 1.234 is available on March 26, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0167 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–2023–0167. 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 individuals 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.

Revision 1 to RG 1.234 and the regulatory analysis may be found in ADAMS under Accession Nos. ML24038A311 and ML23187A550, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Amir Mobasheran, Office of Nuclear Regulatory Research, telephone: 301–415–8112; email: *Amir.Mobasheran@nrc.gov,* and Deanna Zhang, Office of Nuclear Reactor Regulation, telephone: 301–415–1946; email: *Deanna.Zhang@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 1 to RG 1.234 was issued with a temporary identification of Draft Regulatory Guide, (DG)–1416 (ADAMS Accession No. ML23187A549). This revision of this guide (Revision 1) clarifies the NRC's definition of counterfeit, fraudulent, and suspect items. In addition, the staff made several editorial changes to conform to the current format and content of RGs.

Additional Information

The NRC published a notice of the availability of DG–1416 in the **Federal Register** on November 17, 2023 (88 FR 80196) for a 30-day public comment period. The public comment period closed on December 18, 2023. No public comments on DG–1416 were received.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the Code of Federal Regulations (CFR).

Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 1.234, Revision 1, does not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants''; or constitute forward fitting as that term is defined and described in MD 8.4, because, as explained in RG 1.234, Revision 1, licensees are not required to comply with the positions set forth in the RG.

Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be

considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: March 21, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–06392 Filed 3–25–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0469; Project Identifier MCAI–2024–00137–T; Amendment 39–22705; AD 2024–05–13]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Embraer S.A. Model EMB–545 and EMB–550 airplanes. This AD was prompted by a report of a hard landing event with substantial damage to the airplane, in which the angle of attack (AOA) limiter was engaged during the final approach phase in unstable air conditions and remained engaged until the airplane touched down on the runway. This AD requires revising the Limitations and Normal Procedures sections of the existing airplane flight manual (AFM) to incorporate new operational airspeed limitations, and flight control limitations and approach procedures when AOA limiter protection is engaged, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. This AD also requires inspecting records for instances of AOA limiter engagement during a certain phase of flight and reporting findings to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 10, 2024.

The FAA must receive comments on this AD by May 10, 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–2024–0469; 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 ANAC material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*
- You may view this material that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–0469.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3653; email: *hassan.m.ibrahim@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–2024–0469; Project Identifier MCAI–2024–00137–T'' 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 Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3653; email: *hassan.m.ibrahim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2024–02–02, effective February 26, 2024 (ANAC AD 2024–02–02) (also referred to after this as the MCAI), to correct an unsafe condition for all Embraer S.A. Model EMB–545 and EMB–550 airplanes. The MCAI states that a hard landing event with substantial damage to the airplane was reported, in which the AOA limiter was engaged during the final approach phase in unstable air conditions and remained engaged until the airplane touched down on the runway. If the AOA limiter remains engaged during the final approach phase when the landing flare

is commanded, pitch response could be reduced during a critical phase of flight near the ground; in unstable air conditions, this condition could result in a high-rate-of-descent landing and the possible consequent catastrophic structural damage of the airplane on landing.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0469.

Related Material Under 1 CFR Part 51

ANAC AD 2024–02–02 specifies procedures for revising the Limitations and Normal Procedures sections of the existing AFM to incorporate operational airspeed limitations, and flight control limitations and approach procedures when AOA limiter protection is engaged. 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.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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.

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2024–02–02 described previously, 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.''

Compliance With AFM Revisions

FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC AD 2024–02–02 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2024–02–02 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2024–02–02 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0469 after this AD is published.

Differences Between This AD and the MCAI

This AD requires inspecting all airplane records for instances of AOA limiter engagement that occur after passing the final approach fix inbound, or within 5 miles of the intended point of landing if a final approach fix is not required, and reporting findings to the FAA. The compliance time for the records inspection is at intervals not to exceed 30 days after the effective date of this AD for 12 months after the effective date of this AD. The compliance time for reporting is within 10 days after each records inspection.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

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 because if the AOA limiter remains engaged during the final approach phase when the landing flare is commanded, pitch response could be reduced during a critical phase of flight near the ground; in unstable air conditions, this condition could result in a high-rate-of-descent landing and consequent catastrophic structural damage of the airplane on landing. 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 (RFA)

The requirements of the 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 notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 121 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$10,285.
Records inspection	1 work-hour × $85 per hour = $85	0	Up to $1,020	Up to $123,420.
Report results	1 work-hour × $85 per hour = $85	0	Up to $1,020	Up to $123,420.

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:

2024–05–13 Embraer S.A.: Amendment 39–22705; Docket No. FAA–2024–0469; Project Identifier MCAI–2024–00137–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 10, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Embraer S.A. Model EMB–545 and EMB–550 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight.

(e) Unsafe Condition

This AD was prompted by a report of a hard landing event with substantial damage to the airplane, in which the angle of attack (AOA) limiter was engaged during the final approach phase in unstable air conditions and remained engaged until the airplane touched down on the runway. The FAA is issuing this AD to address AOA limiter engagement during the final approach phase when the landing flare is commanded, which could reduce pitch response during a critical phase of flight near the ground. In unstable air conditions, this condition, if not addressed, could result in a high-rate-of-descent landing and consequent catastrophic structural damage to the airplane on landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2024–02–02, effective February 26, 2024 (ANAC AD 2024–02–02).

Note 1 to paragraph (g): Embraer EMB–545/EMB–550 Stall Protection, General Publication GP–8073, Revision 1, dated February 16, 2024, provides additional guidance regarding the actions required by this AD.

(h) Exceptions to ANAC AD 2024–02–02

(1) Where ANAC AD 2024–02–02 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt paragraph (d) of ANAC AD 2024–02–02.

(i) Records Inspection and Report of Results

(1) Within 30 days after the effective date of this AD, each operator must inspect all aircraft records for instances of AOA limiter engagement that occur after passing the final approach fix inbound, or within 5 miles of the intended point of landing if a final approach fix is not required. Repeat the inspection thereafter at intervals not to exceed 30 days until 12 months after the effective date of this AD. One report per operator may include multiple aircraft for the same operator for that inspection.

(2) Within 10 days after the records inspection required in paragraph (i)(1) of this AD, report the results of the inspection, regardless of whether the inspection found any entries, to the FAA by either email: *9-ASO-ATLACO-ADs@faa.gov;* or mail: Attn: Continued Operational Safety, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. The report must include all known information about the event listed in paragraphs (i)(2)(i) through (viii) of this AD:

(i) Date of records inspection;

(ii) Date and time of all AOA limiter engagements that meet the criteria in paragraph (i)(1) of this AD (if any);

(iii) Airplane serial number;

(iv) Weather conditions at the time of each occurrence;

(v) Copy of the pilot's report of the occurrence (if available);

(vi) Any of the following data that is available: Destination, destination weather, Vref, Vapp, status of autopilot and autothrottle, airspeed at time of AOA limiter engagement, altitude at time of AOA limiter engagement, any turbulence present and its severity, crew action (*e.g.,* go around or continued approach), actual AOA at the time of limiter engagement, seat position of the pilot who was flying (*i.e.,* left or right);

(vii) Flight operations quality assurance (FOQA) data (if available); and

(viii) Any other information pertinent to the occurrence.

(j) 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 manager of the International Validation Branch, mail it to the address identified in paragraph (k)(1) 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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

(1) For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3653; email: *hassan.m.ibrahim@faa.gov.*

(2) For Embraer S.A. service information identified in this AD that is not incorporated by reference, contact Embraer S.A., Technical Publications Section (PC 560), Rodovia Presidente Dutra, km 134, 12247–004 Distrito Eugênio de Melo—São José dos Campos—SP—Brazil; telephone: +55 12 3927–0386; email: *distrib@embraer.com.br;* website: *mytechcare.embraer.com.*

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2024–02–02, effective February 26, 2024.

(ii) [Reserved]

(3) For ANAC AD 2024–02–02 that is incorporated by reference, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(4) You may view this material that is incorporated by reference 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-locations* or email *fr.inspection@nara.gov.*

Issued on March 13, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06444 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–2024–0459; Project Identifier MCAI–2024–00117–T; Amendment 39–22696; AD 2024–05–05]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comment; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to all ATR–GIE Avions de Transport Regional Model ATR42 and ATR72 airplanes. As published, the docket number specified in the preamble and regulatory text is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective March 29, 2023. The effective date of AD 2024–05–05 remains March 29, 2023. The date for submitting comments on AD 2024–05–05 remains April 29, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 29, 2023 (89 FR 18534, March 14, 2024).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0459; 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; request for comment; correction, 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2024–0459.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *Shahram.Daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about AD 2024–05–05. Submit comments as instructed in AD 2024–05–05, Amendment 39–22696 (89 FR 18534, March 14, 2024).

Background

AD 2024–05–05 requires accomplishing a functional check of an affected part, replacing an affected part if necessary, and reporting the functional check results, and prohibits the installation of affected parts. That AD applies to all ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes.

Need for the Correction

As published, the docket number specified in the preamble and regulatory text of AD 2024–05–05 is incorrect. The correct docket number is FAA–2024–0459.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2024–0044–E specifies the following procedures:

• Accomplishing a functional check of an affected part.

• Replacing an affected part with a serviceable part, if any discrepancy is detected during the functional check. (A discrepancy is any amount of air that flows through either connector of the right engine extinguishing system when compressed air is passed through either connector of the left engine extinguishing system, and vice versa.)

• Reporting inspection (*i.e.,* functional check) results to the airplane manufacturer.

• Prohibiting the installation of affected parts.

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.

Correction of Publication

This document corrects an error in multiple locations in AD 2024–05–05 and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains March 29, 2023.

Since this action only corrects the docket number for AD 2024–05–05, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2024–05–05 ATR—GIE Avions de Transport Régional: Amendment 39–22696; Docket No. FAA–2024–0459; Project Identifier MCAI–2024–00117–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 29, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional airplanes specified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by a report of incorrect marking and assembly of the two-way valves for the left- and right-hand engine fire extinguishing systems. The FAA is issuing this AD to address inoperative two-way valves in both engine fire extinguishing systems. This condition, if not addressed, could lead to reduced performance of the engine fire extinguishing system, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2024–0044–E, dated February 15, 2024 (EASA AD 2024–0044–E).

(h) Exceptions to EASA AD 2024–0044–E

(1) Where EASA AD 2024–0044–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (4) of EASA AD 2024–0044–E specifies to report inspection results to ATR—GIE Avions de Transport Régional within a certain compliance time. For this AD, report inspection (*i.e.,* functional check) results at the applicable time specified in paragraph (h)(2)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0044–E.

(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 manager of the International Validation Branch, mail it to the address 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 EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *Shahram.Daneshmandi@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.

(3) The following service information was approved for IBR on March 29, 2024 (89 FR 18534, March 14, 2024).

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0044–E, dated February 15, 2024.

(ii) [Reserved]

(4) For EASA AD 2024–0044–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

(6) 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 20, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06282 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2023–0985]

RIN 1625–AA00

Safety Zone; Coastal Virginia Offshore Wind—Commercial Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0483, Offshore Virginia, Atlantic Ocean

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 179 temporary 500-meter safety zones around the construction of 176 wind turbine generators and three offshore substations in Federal waters on the Outer Continental Shelf, east-northeast of Virginia Beach, Virginia. This action is necessary to protect life, property, and the environment during construction of their foundations and their subsequent installation, from May 1, 2024, to May 1, 2027. When enforced, only attending vessels and those vessels specifically authorized by the Fifth Coast Guard District Commander, or a designated representative, are permitted to enter or remain in the temporary safety zones.

DATES: This rule is effective from May 1, 2024, through May 1, 2027.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0985 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 Mr. Matthew Creelman, Waterways Management, at Coast Guard Fifth District, telephone 757–398–6230, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
CVOWCWF Coastal Virginia Offshore Wind—Commercial Wind Farm
DMS Degrees Minutes Seconds
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
OSS Offshore Substation
WGS 84 World Geodetic System 84
NM Nautical Mile
§ Section
U.S.C. United States Code
WTG Wind Turbine Generator

II. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. As an implementing regulation of this authority, 33 CFR part 147 permits the establishment of safety zones for non-mineral energy resource permanent or temporary structures located on the Outer Continental Shelf (OCS) for the purpose of protecting life and property on the facilities, appurtenances and attending vessels, and on the adjacent waters within the safety zone (see 33 CFR 147.10). Accordingly, a safety zone established under 33 CFR part 147 may also include provisions to restrict, prevent, or control certain activities, including access by vessels or persons to maintain safety of life, property, and the environment.

The construction of these OCS facilities is inherently complex because of their location offshore. This complexity creates many unusually hazardous conditions, giving rise to the need for safety zones. Among these unusually hazardous conditions are those presented by hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations giving rise to the risk that debris will fall, increased vessel traffic in support of construction, and the presence of stationary barges in close proximity to the facilities and to each other.

III. Background Information and Regulatory History

On December 13, 2023, the Virginia Electric and Power Company, doing business as Dominion Energy, notified the Coast Guard that they plan to begin construction of facilities in the Coastal Virginia Offshore Wind—Commercial Wind Farm (CVOWCWF) project area within Federal waters on the OCS, specifically in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS–A 0483, approximately 23 nautical miles (NM) east-northeast of Virginia Beach, Virginia.

After determining that establishment of safety zones was necessary to provide for the safety of life, property, and the environment during the anticipated construction of the structures, on January 26, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Coastal Virginia Offshore Wind—Commercial Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0483, Offshore Virginia, Atlantic Ocean'' (89 FR 5136). There we explained the basis for the NPRM and invited comments on our proposed regulatory action related to the establishment of safety zones around the construction of 176 WTGs and three Offshore Substations (OSS's) located in the CVOWCWF project area. In total, two comments were received during the comment period that ended February 26, 2024.

IV. Discussion of Comments, Changes, and the Rule

As noted above, the Coast Guard received two public comments on our NPRM published January 26, 2024. Both commenters generally supported the proposed rule.

One commenter provided notice that three WTG positions were not included in the list of positions on pages 5137–5137 and 5142–5144. The Coast Guard agrees that three WTG positions were missing from the list of positions in the NPRM. The list of positions in the temporary final rule has been updated to include the previously missing WTG positions.

The other commenter offered two additional recommendations for the Coast Guard to consider. First, the commenter recommended we extend the safety zones 500-meters from the outer perimeter of attending vessels in the construction area (vice from the center point of the construction site). Although the Coast Guard could maximize the area of the safety zone by using our authorities in 33 CFR part 147 to do so, we believe that using a 500-meter zone from the center point of construction as a fixed geographic position is most appropriate for this particular offshore construction project. Using the center point of construction to base the location of the safety zone ensures there is a balance between ensuring safety and reducing impacts on vessel transit.

Second, the commenter recommended we expand the definition of ''designated representative'' to include one or more appropriate members of the CVOWCWF project team, in order to effectively enforce a safety zone, maintain navigation safety and reduce demand on Coast Guard resources. The Coast Guard believes that the definition of ''designated representative,'' as cited in our proposed rule, should be retained. Based on the particular details of this offshore construction project, including the short duration of the enforcement period (approximately 48 hours during active construction), the more distant

offshore location which sees less vessel traffic, and the types of large vessels that are most likely to navigate in the vicinity of the safety zones (commercial shipping, fishing, and tugs with tows), the Coast Guard finds no compelling need to broaden the categories of people who qualify for representative designation or the authority to permit passage through and around the enforced safety zone. Limiting the designation to 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 Fifth Coast Guard District Commander in the enforcement of the safety zones will ensure consistent application of the term.

After considering the comments discussed above, the Coast Guard has determined that there are three changes to the regulatory text of this rule from the proposed rule in the NPRM. Specifically, we corrected the list of positions by adding the three WTG positions that were missing in the NPRM.

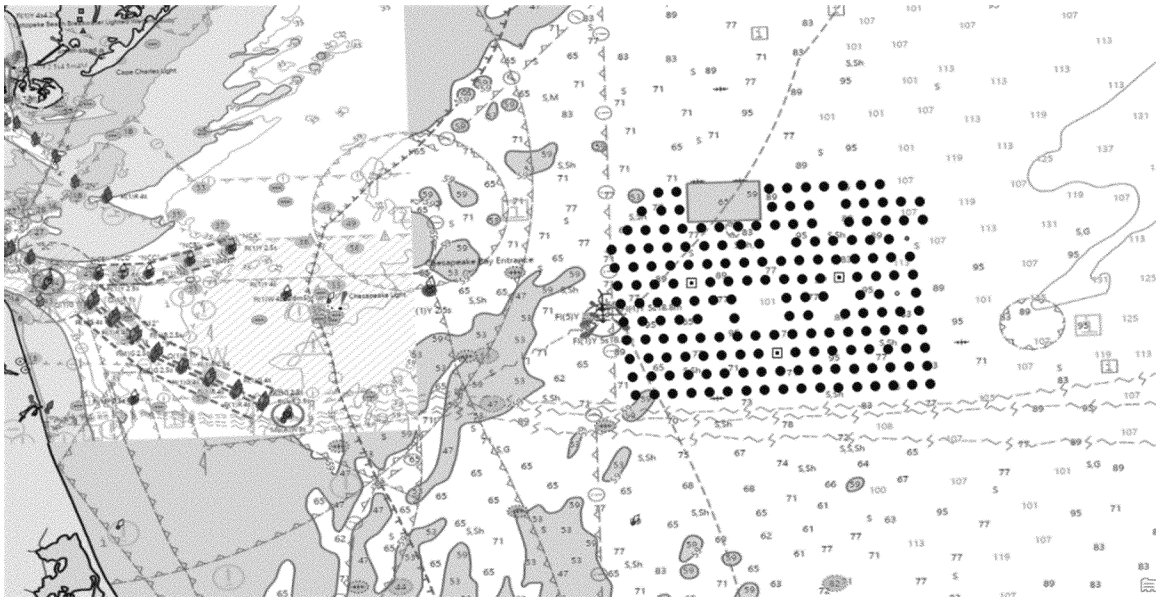
This rule establishes 179 temporary, 500-meter safety zones around the construction sites of 176 WTGs and three OSSs on the OCS from May 1, 2024, through 11:59 p.m. on May 1, 2027.

Each of the 179 temporary safety zones will be enforced individually, for a period lasting approximately 48 hours, as construction progresses from the location of one structure to the location of the next. The Coast Guard will provide notice of each enforcement period via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency or hazardous condition. The Coast Guard is publishing this rulemaking to be effective, and enforceable, through May 1, 2027, to encompass any construction delays due to weather or other unforeseen circumstances. If the project is completed before May 1, 2027, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. Additional information about the construction process of the CVOWCWF can be found at *https://www.boem.gov/renewable-energy/state-activities/CVOW-C.*

The 179 temporary 500-meter safety zones around the construction of 176 WTGs and three OSS's are in the CVOWCWF project area, specifically in the BOEM Renewable Energy Lease Area OCS–A–0483 approximately 23 NM east-northeast of Virginia Beach, Virginia, within Federal waters on the OCS.

The positions of each individual safety zone in this rulemaking are referred to using a unique alpha-numeric naming convention.

Consistent with size limitations on OCS safety zones in 33 CFR 147.15, the safety zones will include the area within 500 meters around the center points of the positions provided in the updated table below, in the language of the rule, while each structure is under active construction. The positions are expressed in Degree Minutes Second (DMS) based on World Geodetic System 84 (WGS 84). The positions of the 179 safety zones are shown on the chartlets below. For scaling purposes, the grid spacing is 0.95 x 0.8 NM.



(Small scale chartlet showing the positions of the safety zones.)

(Large scale chartlet showing the positions of the safety zones with alpha-numeric naming convention.)

Navigation in the vicinity of the safety zones consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows, and recreational vessels.

When subject to enforcement, no unauthorized vessel or person will be permitted to enter a safety zone without obtaining permission from the Fifth Coast Guard District Commander or a designated representative. Requests for entry into the safety zone will be considered and reviewed on a case-by-case basis. Persons or vessels seeking to enter the safety zone must request authorization from the Fifth Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 757–398–6391 (Fifth Coast Guard District Command Center). If permission is granted, all persons and vessels shall comply with the instructions of the Fifth Coast Guard District Commander or designated representative.

The regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

A. Regulatory Planning and Review

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

Aligning with 33 CFR 147.15, the safety zones established would extend to a maximum distance of 500-meters around the OCS facility, measured from its center point. Vessel traffic would be able to safely transit around each of the proposed safety zones, which would occupy a small, designated area in the Atlantic Ocean, without significant impediment to their voyage. These safety zones will provide for the safety of life, and the protection of property, and of the environment during the construction of each structure, in accordance with Coast Guard maritime safety missions.

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 received zero comments from the Small Business Administration on this rulemaking. 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.

This rule may affect owners or operators of vessels intending to transit or anchor in the CVOWCWF, some of which might be small entities. However, these safety zones will not have a significant economic impact on a substantial number of these entities because they will be subject to enforcement only for short, temporary periods, they will allow for deviation requests, and will not be expected to impact vessel transit significantly. Regarding the enforcement period, although these safety zones will be in effect from May 1, 2024, through May 1, 2027, vessels will only be prohibited from entering or remaining in the regulated zone during periods of actual construction activity corresponding to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next throughout the mixed phases. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely will cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels will also be able to request deviation from this rule to transit through a safety zone. Such requests will be considered on a case by-case basis and may be authorized by the Fifth Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a

temporary safety zone around these OCS facilities to be minimal and have no significant economic impact on small entities.

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 will 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 potential 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. 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 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard is amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 147.T01–0985 to read as follows:

§ 147.T01–0985 Safety Zones; Coastal Virginial Offshore Wind—Commercial Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0483, Offshore Virginia, Atlantic Ocean.

(a) *Description.* The area within 500 meters of the center point of each of the positions provided in the table below is an individual safety zone:

Name	Facility type	Latitude	Longitude
G1K11	WTG	36°52′10.43097128″ N	075°20′50.55112518″ W
G1M03	WTG	36°50′17.85976540″ N	075°28′04.02927152″ W
G1K12	WTG	36°52′10.59092864″ N	075°19′54.56958689″ W
G1M04	WTG	36°50′18.07627889″ N	075°27′08.07134847″ W
G1K13	WTG	36°52′10.74355846″ N	075°18′58.58792867″ W
G1M05	WTG	36°50′18.28547996″ N	075°26′12.11326220″ W
G1K14	WTG	36°52′10.88886719″ N	075°18′02.60615617″ W
G1M06	WTG	36°50′18.48736529″ N	075°25′16.15501832″ W
G1K15	WTG	36°52′11.02685154″ N	075°17′06.62427499″ W
G1M07	WTG	36°50′18.68193157″ N	075°24′20.19662240″ W
G1K16	WTG	36°52′11.15750822″ N	075°16′10.64229074″ W
G1M08	WTG	36°50′18.86918522″ N	075°23′24.23808009″ W
G1K17	WTG	36°52′11.28084368″ N	075°15′14.66020907″ W
G1M09	WTG	36°50′19.04912296″ N	075°22′28.27939699″ W
G1K18	WTG	36°52′11.39685463″ N	075°14′18.67803558″ W
G1M10	WTG	36°50′19.22174146″ N	075°21′32.32057869″ W
G1K19	WTG	36°52′11.50553780″ N	075°13′22.69577588″ W
G1M11	WTG	36°50′19.38704718″ N	075°20′36.36163083″ W

Name	Facility type	Latitude	Longitude
G1L03	WTG	36°51′13.39015630″ N	075°28′11.19226080″ W
G1M12	WTG	36°50′19.54503681″ N	075°19′40.40255901″ W
G1L04	WTG	36°51′13.60768637″ N	075°27′15.22311182″ W
G1M13	WTG	36°50′19.69570706″ N	075°18′44.44336883″ W
G1L05	WTG	36°51′13.81789345″ N	075°26′19.25379877″ W
G1M14	WTG	36°50′19.83906437″ N	075°17′48.48406591″ W
G1L06	WTG	36°51′14.02078396″ N	075°25′23.28432730″ W
G1M15	WTG	36°50′19.97510546″ N	075°16′52.52465182″ W
G1L07	WTG	36°51′14.21635459″ N	075°24′27.31470302″ W
G1M16	WTG	36°50′20.10382703″ N	075°15′56.56514024″ W
G1L08	WTG	36°51′14.40460203″ N	075°23′31.34493152″ W
G1M17	WTG	36°50′20.22523552″ N	075°15′00.60553275″ W
G1L09	WTG	36°51′14.58553272″ N	075°22′35.37501844″ W
G1M18	WTG	36°50′20.33932767″ N	075°14′04.64583497″ W
G1L10	WTG	36°51′14.75914336″ N	075°21′39.40496939″ W
G1M19	WTG	36°50′20.44610343″ N	075°13′08.68605250″ W
G1L12	WTG	36°51′15.08440100″ N	075°19′47.46448580″ W
G1N03	WTG	36°49′22.32924535″ N	075°27′56.82891331″ W
G1L13	WTG	36°51′15.23605115″ N	075°18′51.49406251″ W
G1N04	WTG	36°49′22.54474453″ N	075°27′00.88220767″ W
G1L14	WTG	36°51′15.38038104″ N	075°17′55.52352570″ W
G1N05	WTG	36°49′22.75293211″ N	075°26′04.93533961″ W
G1L15	WTG	36°51′15.51738738″ N	075°16′59.55288098″ W
G1N06	WTG	36°49′22.95380477″ N	075°25′08.98831473″ W
G1L16	WTG	36°51′15.64707661″ N	075°16′03.58213399″ W
G1N07	WTG	36°49′23.14736895″ N	075°24′13.04113865″ W
G1L17	WTG	36°51′15.76944545″ N	075°15′07.61129032″ W
G1N08	WTG	36°49′23.33362134″ N	075°23′17.09381697″ W
G1L18	WTG	36°51′15.88449062″ N	075°14′11.64035558″ W
G1N09	WTG	36°49′23.51255863″ N	075°22′21.14635529″ W
G1L19	WTG	36°51′15.99221858″ N	075°13′15.66933541″ W
G1N10	WTG	36°49′23.68418726″ N	075°21′25.19875519″ W
G1N11	WTG	36°49′23.84850393″ N	075°20′29.25103034″ W
G2F06	WTG	36°55′51.61831765″ N	075°25′59.09646230″ W
G1N12	WTG	36°49′24.00550534″ N	075°19′33.30318231″ W
G2F07	WTG	36°55′51.81892515″ N	075°25′03.07058271″ W
G1N13	WTG	36°49′24.15519793″ N	075°18′37.35521671″ W
G2F08	WTG	36°55′52.01218908″ N	075°24′07.04455187″ W
G1N14	WTG	36°49′24.29757841″ N	075°17′41.40713915″ W
G2F09	WTG	36°55′52.19811586″ N	075°23′11.01837544″ W
G1N15	WTG	36°49′24.43264349″ N	075°16′45.45895522″ W
G2F10	WTG	36°55′52.37670219″ N	075°22′14.99205905″ W
G1N16	WTG	36°49′24.56039962″ N	075°15′49.51067054″ W
G2F11	WTG	36°55′52.54794477″ N	075°21′18.96560832″ W
G1N17	WTG	36°49′24.68084352″ N	075°14′53.56229072″ W
G2G03	WTG	36°54′55.47610540″ N	075°28′39.95488075″ W
G1N18	WTG	36°49′24.79397189″ N	075°13′57.61382134″ W
G2G04	WTG	36°54′55.69770649″ N	075°27′43.94075021″ W
G1N19	WTG	36°49′24.89979121″ N	075°13′01.66526804″ W
G2G05	WTG	36°54′55.91197477″ N	075°26′47.92645237″ W
G2B06	WTG	36°59′33.71078023″ N	075°26′27.78408472″ W
G2G06	WTG	36°54′56.11890692″ N	075°25′51.91199284″ W
G2B07	WTG	36°59′33.91543395″ N	075°25′31.71304424″ W
G2G08	WTG	36°54′56.51075936″ N	075°23′59.88261121″ W
G2C05	WTG	36°58′38.57467997″ N	075°27′20.62031850″ W
G2G09	WTG	36°54′56.69568276″ N	075°23′03.86770040″ W
G2C06	WTG	36°58′38.21250366″ N	075°26′20.58758650″ W
G2G10	WTG	36°54′56.87326655″ N	075°22′07.85265041″ W
G2C07	WTG	36°58′38.41606238″ N	075°25′24.55006971″ W
G2H03	WTG	36°53′59.94685093″ N	075°28′32.77985639″ W
G2D04	WTG	36°57′42.25404052″ N	075°28′05.53076883″ W
G2H04	WTG	36°54′00.16743776″ N	075°27′36.77698565″ W
G2D05	WTG	36°57′42.47136588″ N	075°27′09.48264513″ W
G2H05	WTG	36°54′00.38069261″ N	075°26′40.77394842″ W
G2D06	WTG	36°57′42.68134287″ N	075°26′13.43435729″ W
G2H06	WTG	36°54′00.58661217″ N	075°25′44.77075028″ W
G2D07	WTG	36°57′42.88396818″ N	075°25′17.38591093″ W
G2H07	WTG	36°54′00.78520287″ N	075°24′48.76739692″ W
G2D08	WTG	36°57′43.07924823″ N	075°24′21.33731172″ W
G2H08	WTG	36°54′00.97646139″ N	075°23′52.76389394″ W
G2D09	WTG	36°57′43.26717972″ N	075°23′25.28856531″ W
G2H09	WTG	36°54′01.16038445″ N	075°22′56.76024694″ W
G2D10	WTG	36°57′43.44775934″ N	075°22′29.23967731″ W
G2J03	WTG	36°53′04.41747586″ N	075°28′25.56744405″ W

Name	Facility type	Latitude	Longitude
G2D11	WTG	36°57′43.62099353″ N	075°21′33.19065340″ W
G2J04	WTG	36°53′04.63703769″ N	075°27′29.57582449″ W
G2E03	WTG	36°56′46.50113710″ N	075°28′54.35420276″ W
G2J05	WTG	36°53′04.84927487″ N	075°26′33.58403927″ W
G2E04	WTG	36°56′46.72478481″ N	075°27′58.31753397″ W
G2J06	WTG	36°53′05.05418408″ N	075°25′37.59209399″ W
G2E05	WTG	36°56′46.94108831″ N	075°27′02.28069620″ W
G2J07	WTG	36°53′05.25176202″ N	075°24′41.59999425″ W
G2E06	WTG	36°56′47.15004427″ N	075°26′06.24369509″ W
G2J09	WTG	36°53′05.62494006″ N	075°22′49.61534996″ W
G2E07	WTG	36°56′47.35165913″ N	075°25′10.20653631″ W
G2K03	WTG	36°52′08.88765106″ N	075°28′18.39844436″ W
G2E08	WTG	36°56′47.54592958″ N	075°24′14.16922549″ W
G2K04	WTG	36°52′09.10620073″ N	075°27′22.41806364″ W
G2E09	WTG	36°56′47.73285231″ N	075°23′18.13176420″ W
G2K05	WTG	36°52′09.31742657″ N	075°26′26.43752208″ W
G2E10	WTG	36°56′47.91243374″ N	075°22′22.09416621″ W
G2K06	WTG	36°52′09.52132527″ N	075°25′30.45682126″ W
G2E11	WTG	36°56′48.08467058″ N	075°21′26.05643310″ W
G2K07	WTG	36°52′09.71790326″ N	075°24′34.47596683″ W
G2F03	WTG	36°55′50.97245702″ N	075°28′47.17314135″ W
G2K08	WTG	36°52′09.90715725″ N	075°23′38.49496439″ W
G2F04	WTG	36°55′51.19508514″ N	075°27′51.14774524″ W
G2K09	WTG	36°52′10.08908391″ N	075°22′42.51381954″ W
G2F05	WTG	36°55′51.41036987″ N	075°26′55.12218502″ W
G2K10	WTG	36°52′10.26368969″ N	075°21′46.53253794″ W
G3F14	WTG	36°55′53.01763543″ N	075°18′30.88550656″ W
G3B12	WTG	36°59′34.82834796″ N	075°20′51.35563765″ W
G3F15	WTG	36°55′53.15951871″ N	075°17′34.85857490″ W
G3B13	WTG	36°59′34.98885750″ N	075°19′55.28375508″ W
G3F16	WTG	36°55′53.29406124″ N	075°16′38.83153710″ W
G3F17	WTG	36°55′53.42125972″ N	075°15′42.80439879″ W
G3F18	WTG	36°55′53.54112062″ N	075°14′46.77716562″ W
G3B14	WTG	36°59′35.14201327″ N	075°18′59.21175196″ W
G3F19	WTG	36°55′53.65364064″ N	075°13′50.74984322″ W
G3B15	WTG	36°59′35.28781198″ N	075°18′03.13963394″ W
G3G11	WTG	36°54′57.04351716″ N	075°21′11.83746691″ W
G3B16	WTG	36°59′35.42625034″ N	075°17′07.06740666″ W
G3G12	WTG	36°54′57.20643128″ N	075°20′15.82215551″ W
G3B17	WTG	36°59′35.55733479″ N	075°16′10.99507580″ W
G3G13	WTG	36°54′57.36200563″ N	075°19′19.80672183″ W
G3B18	WTG	36°59′35.68106205″ N	075°15′14.92264701″ W
G3G14	WTG	36°54′57.51024665″ N	075°18′23.79117153″ W
G3C12	WTG	36°58′39.32403511″ N	075°20′44.22693929″ W
G3G16	WTG	36°54′57.78471551″ N	075°16′31.75974356″ W
G3C13	WTG	36°58′39.48355669″ N	075°19′48.16635951″ W
G3G17	WTG	36°54′57.91094652″ N	075°15′35.74387716″ W
G3C14	WTG	36°58′39.63572535″ N	075°18′52.10565996″ W
G3G18	WTG	36°54′58.02984078″ N	075°14′39.72791666″ W
G3C16	WTG	36°58′39.91800046″ N	075°16′59.98392414″ W
G3G19	WTG	36°54′58.14139499″ N	075°13′43.71186768″ W
G3C17	WTG	36°58′40.04811007″ N	075°16′03.92289920″ W
G3H12	WTG	36°54′01.66816614″ N	075°20′08.74849831″ W
G3C18	WTG	36°58′40.17086334″ N	075°15′07.86177303″ W
G3H13	WTG	36°54′01.82276296″ N	075°19′12.74433164″ W
G3C19	WTG	36°58′40.28626670″ N	075°14′11.80055940″ W
G3H14	WTG	36°54′01.97002729″ N	075°18′16.74004507″ W
G3C20	WTG	36°58′40.39431689″ N	075°13′15.73925991″ W
G3H16	WTG	36°54′02.24255501″ N	075°16′24.73115496″ W
G3D12	WTG	36°57′43.78687899″ N	075°20′37.14149923″ W
G3H17	WTG	36°54′02.36782157″ N	075°15′28.72655864″ W
G3D13	WTG	36°57′43.94541242″ N	075°19′41.09222040″ W
G3H19	WTG	36°54′02.59635341″ N	075°13′36.71709160″ W
G3D14	WTG	36°57′44.09660027″ N	075°18′45.04281857″ W
G3J12	WTG	36°53′06.12974216″ N	075°20′01.63737188″ W
G3D16	WTG	36°57′44.37692600″ N	075°16′52.94368860″ W
G3J13	WTG	36°53′06.28335394″ N	075°19′05.64446363″ W
G3D17	WTG	36°57′44.50606705″ N	075°15′56.89396774″ W
G3J15	WTG	36°53′06.56858897″ N	075°17′13.65830753″ W
G3D18	WTG	36°57′44.62785910″ N	075°15′00.84415047″ W
G3J16	WTG	36°53′06.70021537″ N	075°16′17.66507094″ W
G3D19	WTG	36°57′44.74230209″ N	075°14′04.79424245″ W
G3J17	WTG	36°53′06.82450998″ N	075°15′21.67173614″ W
G3D20	WTG	36°57′44.84939275″ N	075°13′08.74424932″ W

Name	Facility type	Latitude	Longitude
G3J18	WTG	36°53′06.94147924″ N	075°14′25.67830877″ W
G3E13	WTG	36°56′48.40710702″ N	075°19′33.98058407″ W
G3J19	WTG	36°53′07.05111989″ N	075°13′29.68479445″ W
G3E14	WTG	36°56′48.55730976″ N	075°18′37.94247944″ W
T1L11	OSS	36°51′14.92543064″ N	075°20′43.43478996″ W
G3E15	WTG	36°56′48.70016447″ N	075°17′41.90426225″ W
T2G07	OSS	36°54′56.31849964″ N	075°24′55.89737723″ W
G3E16	WTG	36°56′48.83567758″ N	075°16′45.86593816″ W
T3G15	OSS	36°54′57.65115104″ N	075°17′27.77551023″ W
G3E17	WTG	36°56′48.96384581″ N	075°15′49.82751279″ W
G3E18	WTG	36°56′49.08466587″ N	075°14′53.78899178″ W
G3F12	WTG	36°55′52.71185004″ N	075°20′22.93902891″ W
G3F13	WTG	36°55′52.86841469″ N	075°19′26.91232645″ W

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

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in 33 CFR 147.20;

(2) A vessel authorized by the Fifth Coast Guard District Commander or a designated representative.

(d) *Request for Permission.* Persons or vessels seeking to enter the safety zone must request authorization from the Fifth Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the Fifth Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 757–398–6391 (Fifth Coast Guard District Command Center).

(e) *Effective dates and enforcement periods.* This section will be in effect from May 1, 2024, through May 1, 2027. Individual safety zones designated in the table in subparagraph (a) will only be subject to enforcement, however, during active construction or other circumstances which may create a hazard to navigation as determined by the Fifth Coast Guard District Commander. The Fifth Coast Guard District Commander will provide notification of the exact dates and times each safety zone is subject to enforcement in advance of each enforcement period for each of the locations listed above, in paragraph (a) of this section. Notifications will be made to the local maritime community through the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency. If the entire project is completed before May 1, 2027, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The Fifth Coast Guard District Local Notice to Mariners can be found at: *https://www.navcen.uscg.gov.*

Dated: March 21, 2024.

S.N. Gilreath,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2024–06409 Filed 3–25–24; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 302–4 and 302–9

[FTR Case 2022–03; Docket No. GSA–FTR–2022–0013, Sequence No. 2]

RIN 3090–AK64

Federal Travel Regulation; Alternative Fuel Vehicle Usage During Relocations

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the Federal Travel Regulation to allow agencies greater flexibility for authorizing shipment of a relocating employee's alternative fueled privately-owned vehicle or extending driving times of these types of vehicles if necessary.

DATES: Effective April 25, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Program Analyst, Office of Government-wide Policy, at (202)669–1653 or *travelpolicy@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at (202) 501–4755 or *GSARegSec@gsa.gov.* Please cite ''FTR Case 2022–03.''

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule at 88 FR 15635 on March 14, 2023 proposing to amend the Federal Travel Regulation (FTR) to allow agencies greater flexibility for authorizing shipment of a relocating employee's alternative fueled privately-owned vehicle. The analysis of comments on the proposed rule did not require any regulatory changes to the final rule.

Consistent with the guidance of E.O. 14057, *Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,* GSA is amending the FTR to apply these changes to privately-owned vehicles (POV) that use alternative fuel, such as electric batteries or hydrogen fuel cells. Currently, an alternative fueled POV may disadvantage Federal employees when relocating to a new duty station due to the limited driving range of many of these vehicles.

GSA designed current relocation regulations for internal combustion engine (ICE) POVs, which are easily capable of averaging a distance of 300 miles per calendar day during en route travel, which is the distance requirement currently in place in the FTR when a POV is used for permanent change of station travel.

Even if an alternative fuel vehicle (AFV) is capable of traveling 300 miles per day under ideal conditions, it could take longer than a day or require a circuitous route and a greater amount of time to reach that distance depending on fueling availability along the route to the new permanent duty station.

While an agency's determination of whether to authorize shipment of an employee's internal combustion engine (ICE) POV is straightforward, the determination for AFVs is not so clear. Currently, an employee must be relocating 600 miles or more for an agency to consider shipping their POV (and then, the employee would use the agency's chosen transportation method to reach their destination). Agency

considerations for authorization of POV transportation within the continental U.S. (CONUS) largely weigh cost considerations and do not account for the employee's ability to expediently drive their AFV POV to the new permanent duty station if shipment is not authorized.

Many factors need consideration before the agency decides whether to ship a relocating employee's AFV POV or authorize another method of transportation. Agencies should consider the types of fueling stations available and where the fueling stations are located before deciding whether to authorize POV shipment. Information can be found at the Department of Energy Alternative Fuels Center (available at *https://afdc.energy.gov*). For example, with electric vehicles, if lower level (slower) charging stations are all that are available en route to a relocation destination, extra time and per diem may need to be authorized for the employee to drive their POV to the new official station (if determined to be advantageous to the Government). Further, agencies would need to consider whether to authorize a different route as officially necessary for the POV to recharge. Currently, hydrogen-powered vehicles are mainly driven in California where the large majority of this type of fueling station exist; limited fueling stations exist outside of the state. Moreover, electric cars have various ranges that they can travel after charging, and ranges could be reduced if the car is traveling at highway speeds or in cold weather, among other factors.

In short, this means that agency determination of whether to ship a relocating employee's POV involves more factors for AFVs than for ICE vehicles. These changes will provide agencies with additional factors to help determine whether or not shipping an employee's alternative fuel POV is more cost-effective and advantageous to the Government than authorizing the employee to drive their POV to the new official station.

The costs of these changes will be minimal because currently only a small percentage of POVs require alternative fuel (estimated costs do not include hybrid vehicles as they do not ''require'' alternative fuel to operate). Although a small but increasing percentage of current relocations involve AFVs and the range capabilities and infrastructure for refueling these vehicles is improving, the rate of future range improvements in AFVs is unknown.

II. Discussion of the Final Rule

GSA received four comments through the public comment process.

1. One anonymous commenter expressed concern that the rule would result in increased POV shipments, which would lead to increased rental car use, and suggested that agencies ''give extra travel days to employees . . . [r]ather than mandating the shipping of alternative fuel vehicles.'' In response, GSA notes that this rule applies to POV shipments within CONUS, and unless the POV is shipped to/from outside the Continental U.S. (OCONUS,) the FTR does not authorize reimbursement of rental car fees (see FTR 302–16.2; 302–6.18). GSA agrees that agencies could allow for extra travel days rather than AFV shipment, which is why the rule defers to agencies to decide what course of action is more cost-effective and advantageous to the Government.

2. One commenter wanted GSA to withdraw the proposed rule because it would make the FTR more complex and would result in taxpayers paying for another person's transportation choice. GSA uses plain language and question and answer format to make the FTR simpler to read and understand. The commenter's observation regarding taxation is not within the scope of this final rule and is therefore not addressed.

3. Another commenter agreed with the rule's intent, but suggested several changes for GSA to consider: (1) define ''legitimate range capabilities'' based on range capability data of AFVs currently on the market, (2) place examples of exceptions to the minimum daily driving distance at 302–4.401 in a list or sentence format rather than a parenthetical to avoid equivalency comparisons between the exceptions, and (3) require the use of alternative fuel heavy-duty trucks to carry any AFV that is transported. In response, GSA notes that: (1) Creating the list of AFVs and their ranges would be difficult because the market is always changing with new models being added, existing models being improved, and older models being removed. (2) The examples at 302–4.401 are not listed in any particular order to imply the importance of one exception over another. (3) GSA has no authority to require transport of AFVs by alternative fueled heavy-duty trucks.

4. The Zero Emission Transportation Association (ZETA) commented in support of the proposed rule but suggested that GSA develop clear guidance ''on what types of range and charging availability restrictions constitute 'legitimate' limitations''. As GSA noted in response to the previous comment, it is impractical to do so given the pace of market change.

III. Executive Orders 12866, 13563 and 14094

Executive Orders (E.O.s) 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, harmonizing rules, and promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) amends and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action under E.O. 12866 and, therefore, is subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

This action is excepted from Congressional Review Act reporting requirements prescribed under 5 U.S.C. 801 since it relates to agency management or personnel and is therefore not a ''rule'' as defined by the Congressional Review Act. 5 U.S.C. 804(3)(B).

V. Regulatory Flexibility Act

GSA does not expect this final 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.C. 601, *et seq.,* because it applies only to Federal agencies and employees. Therefore, a Final Regulatory Flexibility Analysis was not performed.

VI. Regulatory Impact Analysis

This is a significant regulatory action under E.O. 12866. There are an average of 31,423 domestic and international relocations per year across the Federal Government.[1] However, this data does not differentiate between relocations within CONUS and OCONUS. This rule only impacts relocations within CONUS. In order to estimate the number of relocations within CONUS, GSA

[1] Business Travel and Relocation Dashboard: *https://d2d.gsa.gov/report/business-travel-and-relocation-dashboard.*

subtracted the number of extended storage relocations because those reflect when federal employees are relocated OCONUS. GSA calculated an average of 8,561 relocations OCONUS per year across the Federal Government. Therefore, GSA calculated a yearly average of 22,862 (= 31,423 − 8,561) relocations within CONUS.

GSA notes that federal agencies are not required to track relocation data regarding types of POVs. The estimates used for this economic analysis are based upon a small number of federal agency inputs and overall U.S. population trends in alternative fuel POVs. GSA received an estimate of three percent alternative fuel POVs from across the Federal agencies.

GSA estimates that 3 percent (685) of the average of 22,682 domestic relocations include alternative fuel POVs (22,682 × .03 = 685) at an additional cost of $150 per vehicle for the first year. Therefore, GSA calculated the total estimated annual cost for the first year to be $102,750 (= 685 vehicles × $150 per vehicle).

GSA received an estimated increase of one percent every year for alternative fuel POVs based on a small number of federal agency inputs and overall U.S. population trends in AFV ownership. A breakdown of total estimated Government cost by year is provided in the table below.

Year	Annual number of AFV moves	Additional estimated cost per move	Total annual added cost
1	685 (3 percent of Annual Moves)	$150	$102,750.
2	692 (Assuming 1.01 percent increase)	150	103,800.
3	699(Assuming 1.01 percent increase)	150	104,850.
4	706 (Assuming 1.01 percent increase)	150	105,900.
5	713(Assuming 1.01 percent increase)	150	106,950.
6	720 (Assuming 1.01 percent increase)	150	108,000.
7	727(Assuming 1.01 percent increase)	150	109,050.
8	734 (Assuming 1.01 percent increase)	150	110,100.
9	741(Assuming 1.01 percent increase)	150	111,150.
10	748 (Assuming 1.01 percent increase)	150	112,200.
1 through 10 Totals	7,165 Total Moves	150	1,074,750 Total Cost for 10 Years.

The estimated total Government cost in the first 10 years after publication is $1,074,750. The following table is a summary of the estimated costs calculated for a ten-year time horizon at a 3- and 7-percent discount rate:

Summary	Total costs
Present Value (3)%	$914,603
Present Value (7)%	750,774

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Part 302–4 and 302–9

Government employees, Travel, and transportation expenses.

Robin Carnahan,

Administrator, General Services Administration.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 302–4 and 302–9 as set forth below:

PART 302–4 ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

■ 1. The authority citation for part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

■ 2. Amend § 302–4.201 by revising the third sentence of the undesignated paragraph to read as follows:

§ 302–4.201 How are my authorized en route travel days and per diem determined for relocation travel?

* * * An exception to the daily minimum driving distance may be made when delay is beyond control of the employee, such as when it results from acts of God or restrictions by Governmental authorities; when the employee is an individual with a disability, as defined by Section 501 of the Rehabilitation Act of 1973 and its implementing regulations or has special needs; when the employee's alternative fuel POV cannot meet the daily minimum driving distance due to vehicle range capability and fueling availability limitations; or for other pre authorized exceptions.

■ 3. Revise § 302–4.401 to read as follows:

§ 302–4.401 Are there exceptions to this daily minimum?

Yes, your agency may authorize exceptions to the daily minimum driving distance when there is a delay beyond your control such as acts of God, restrictions by Governmental authorities, or other acceptable reasons (*e.g.,* the employee is an individual with a disability or has special needs; alternative fuel vehicle range capability and fueling availability limitations). Your agency must have a designated approving official to authorize the pre authorized exceptions.

■ 4. Revise § 302–4.704 to read as follows:

§ 302–4.704 Must we require a minimum driving distance per day?

Yes, you must establish a minimum driving distance not less than an average of 300 miles per day. However, an exception to the daily minimum driving distance may be made when the delay is:

(a) Beyond control of the employee, *e.g.,* results from acts of God or restrictions by Government authorities;

(b) Due to a disability or special need; or

(c) Due to vehicle range capability and fueling availability limitations of the employee's alternative fuel POV; or

(d) For other pre authorized exceptions.

PART 302–9—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY OR TEMPORARY STORAGE OF A PRIVATELY OWNED VEHICLE

■ 5. The authority citation for part 302–9 continues to read as follows:

Authority: 5 U.S.C. 5737a; 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 6. Amend § 302–9.4 by adding a sentence to the end of the undesignated paragraph to read as follows:

§ 302–9.4 What are the purposes of the allowance for transportation of a POV?

* * * For example, your agency may determine that it is both advantageous and cost effective to the Government to allow for transportation of an alternative fuel POV which would be impractical to drive a long distance to the new official station due to vehicle range capability and fueling availability limitations, but has practical use once at the new official station.

■ 7. Revise § 302–9.301(e) to read as follows:

§ 302–9.301 Under what conditions may my agency authorize transportation of my POV within CONUS?

* * * * *

(e) The distance that the POV is to be shipped is 600 miles or more. An exception to the 600-mile or more distance requirement may be made for alternative fuel vehicle range capability and fueling availability limitations.

■ 8. Revise § 302–9.606(f) to read as follows:

§ 302–9.606 What must we consider in determining whether transportation of a POV within CONUS is cost effective?

* * * * *

(f) The distance that the POV is to be shipped is 600 miles or more. An exception to the 600-mile distance requirement may be made for alternative fuel vehicle range capability and fueling availability limitations.

[FR Doc. 2024–06352 Filed 3–25–24; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21–346, 15–80; ET Docket No. 04–35; FCC 23–71; FR ID 209914]

Resilient Networks; Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule; withdrawal; re-issuance; announcement of compliance date.

SUMMARY: The Federal Communications Commission (Commission or FCC) published a document in the **Federal Register** on January 26, 2024, concerning an Order on Reconsideration that addresses the Petition for Clarification and Partial Reconsideration (Petition) filed by CTIA and the Competitive Carriers Association (CCA) (collectively, Petitioners) of the Commission's Report and Order regarding the ''Mandatory Disaster Response Initiative'' (MDRI) by extending the compliance deadline to implement elements of the MDRI to May 1, 2024. In its Order on Reconsideration, the Commission also agrees with the request to treat Roaming under Disaster arrangements (RuDs) as presumptively confidential when filed with the Commission. In this document, the Commission is withdrawing its previous **Federal Register** publication of the Order on Reconsideration and substituting the present document to correct certain information regarding the compliance date and effective date. In addition, this document announces that, on October 27, 2023, the Office of Management and Budget (OMB) approved, for a period of three years, the information collection requirements associated with the rules adopted in the Report and Order. The OMB Control Number is 3060–1317. The Commission also announces that compliance with the rules will be required, and revises its rules to specify this date and to remove text advising that compliance was not required until OMB review was completed. This action is consistent with the 2023 Order on Reconsideration, which stated that the Commission would publish a document in the **Federal Register** announcing a compliance date and revise the rule accordingly.

DATES:

Withdrawal date: The rule published at 89 FR 5105, January 26, 2024, is withdrawn March 26, 2024.

Effective date: This rule is effective April 25, 2024.

Compliance date: Compliance with the provisions of 47 CFR 4.17 is required beginning May 1, 2024.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact James Wiley, Deputy Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–1678 or via email at *James.Wiley@fcc.gov* or Logan Bennett, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790 or via email at *Logan.Bennett@fcc.gov.* If you have any comments on the information collection burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, via email to *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is an updated summary of the Commission's Order on Reconsideration, FCC 23–71, adopted September 14, 2023, and released September 15, 2023. The full text of this document remains available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-23-71A1.pdf.* This document also announces that OMB approved the information collection requirements in § 4.17 on October 27, 2023. The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, regarding OMB Control Number 3060–1317. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission has sent a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on October 27, 2023, for the information collection requirements contained in § 4.17.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a

collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1317.

OMB Approval Date: October 27, 2023.

OMB Expiration Date: October 31, 2026.

Title: Resilient Networks.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 75 respondents; 1,725 responses.

Estimated Time per Response: 1 hour–20 hours.

Frequency of Response: One-time, on occasion reporting and annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c.

Total Annual Burden: 4,575 hours.

Total Annual Cost: No Cost.

Needs and Uses: The nation's communications networks provide a significant lifeline for those in need during disasters and other emergencies. Recent events, including Hurricane Ida, earthquakes in Puerto Rico, severe winter storms in Texas, and active hurricane and wildfire seasons, have demonstrated however that the United States' communications infrastructure is susceptible to disruption during disaster events. To address this issue, the Federal Communications Commission adopted a Report and Order in June 2022 to improve the reliability and resiliency of mobile wireless networks. See 87 FR 59329 (2022). In the Report and Order, the Commission introduced the Mandatory Disaster Response Initiative (MDRI) and set forth requirements that the nation's facilities-based mobile wireless providers must take to ensure their compliance the MDRI. Pursuant to the MDRI, these providers must take action related to roaming with other providers, mutual aid agreements, municipal preparedness and restoration and consumer readiness and preparation. These providers must also submit reports to the Commission detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions on request, perform annual testing of their roaming capabilities and related coordination processes, and issue written denials of roaming requests, among other requirements.

The Commission submits this information collection, which seeks to have collected information described in the Report and Order, to support its adoption of the MDRI. The collected information will be used by the Commission, consumers and consumer groups, service providers to realize significant public safety benefits. For example, consumers and consumer groups will use the information to increase consumer education and improve consumer preparedness for disasters and other emergencies. Further, providers will use the information to ensure that roaming will work expeditiously in times of emergencies and to better understand their network capabilities related to roaming and ensure their networks roam as effectively as possible when a disaster strikes. Further, the Commission will use information as a basis for potential future improvements to the MDRI and other programs in furtherance of public safety, including by gauging providers' compliance with the MDRI's roaming provision, ensuring accountability by providers who fail to comply and for resolving disputes related to roaming agreements. Thus, the information sought in this collection is necessary and vital to ensuring that the MDRI is effective at protecting the life and property of the public.

Synopsis

I. Introduction

The Report and Order adopted the Mandatory Disaster Response Initiative (MDRI) to improve network resilience during disasters, aligning with the industry-developed Wireless Network Resiliency Cooperative Framework. It mandated five provisions for facilities-based mobile wireless providers, including bilateral Roaming under Disaster arrangements (RuDs), mutual aid agreements, municipal preparedness, consumer readiness, and public communication. In particular, the Report and Order requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active. The Commission clarified that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap. The Commission originally set a compliance date for the rules at the later of (i) 30 days after review of any new information collection requirements associated with the Report and Order by the Office of Management and Budget (OMB) or the Public Safety and Homeland Security Bureau's (Bureau) determination that such review is not required, or (ii) March 30, 2023, for non-small providers and June 30, 2023, for small providers.

Petitioners jointly filed a Petition for Clarification and Partial Reconsideration (CTIA and CCA Petition or Petition) of the Commission's Report and Order. In response to the Petition, the Commission issued an Order on Reconsideration extending the compliance deadline, determining that RuD arrangements would be treated as presumptively confidential, and otherwise declining to modify the Report and Order.

Modification of Compliance Implementation Timeline

The CTIA and CCA Petition requests that the Commission ''[p]rovide sufficient time for wireless providers—at least 12 months for non-small facilities-based mobile wireless providers and 18 months for small facilities-based mobile wireless providers—to achieve compliance with the new obligations.'' They further ask that those dates be calculated from the date of OMB approval of the rule for Paperwork Reduction Act (PRA) purposes. As described below, the Order on Reconsideration establishes a single date certain for compliance by all providers of May 1, 2024 that affords a reasonable extension by providing approximately 20 months for all providers from publication of the Report and Order in the **Federal Register** to achieve compliance. This will extend reasonable relief to providers, while preserving the benefits of the underlying rules for consumers relying on Petitioners' networks for connectivity and emergency communications access during disasters in advance of the 2024 hurricane and wildfire seasons. In doing so, the Order on Reconsideration also eliminates the need to continue to distinguish between small and non-small providers under the MDRI.

Background. In requesting an extended implementation timeframe, Petitioners argue that the Commission's estimate of 200 hours per provider for compliance is ''not aligned with the

amount of work and resources that will be required to enter the multiple bilateral RuD and mutual aid arrangements and to complete roaming testing as required by the MDRI rules.'' They further argue that providers will need more time to (1) negotiate agreements and (2) complete an initial round of roaming testing. In addition, Petitioners indicate that ''[i]n some cases'' providers may not have existing agreements to leverage, raising the potential for unanticipated complexities, and may need to include ''terms unique to the disaster context in which they will be invoked.'' In instituting a deadline for providers to enter into RuDs, they further assert that the Commission has ''effectively reverse[d] course on a decade of precedent regarding the timeframes for negotiating roaming arrangements.'' Petitioners also claim that the time allowed is insufficient for providers to enter into both RuDs and mutual aid agreements and to complete the technical and operational tasks necessary to support roaming testing. Finally, Petitioners argue that providers would need to negotiate agreements and conduct testing serially, rather than simultaneously, due to resource constraints for smaller providers.

Relatedly, the Petition seeks clarification on three other issues impacting timeframes for compliance. First, the Petition recites that ''[t]he Commission should affirm that, like the Resilient Networks Order's approach to mutual aid arrangements, the small provider compliance date applies to both parties to a RuD arrangement, as well as roaming testing, when at least one party to an arrangement is a small provider.'' Second, the Petition requests that the Commission ''[a]lign the definitions of 'non-small facilities-based' and 'small facilities-based' wireless providers with the FCC's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9–1–1 context.'' Third, the Petition asks the Commission to ''[a]ffirm that [OMB] review is required for all information collection obligations.'' Petitioners further argue that ''giving providers a mere 30 days after OMB approval to comply with § 4.17(a) and (b) is unworkable given the complexity of executing RuD and mutual aid agreements, as well as roaming testing.

Comments. In support of the Petition, one commenter cites the ''limited personnel and financial resources'' of small carriers as justification for providing at least an 18-month timeframe for compliance, suggesting that negotiating RuDs and mutual aid agreements with multiple parties and conducting testing of their roaming capabilities ''is likely to take longer than the 200 hour estimate,'' and argue that a longer timeframe would put smaller carriers on ''a more equal footing'' for negotiations. Others similarly assert that the Commission's compliance estimates for small providers is unrealistic and support an extended compliance timeframe of at least 18 months. A commenter also argues that small providers are less likely to have existing agreements to leverage, and echo the argument that truncated negotiations may negatively impact their ability to obtain reasonable terms and conditions. Another commenter also suggests that ''small rural wireless carriers will receive a lower priority from large carriers in conducting negotiations,'' and another similarly avers that ''small, rural carriers will receive a lower priority than negotiations with larger providers'' impacting their ability to timely comply.

One commenter in particular also emphasized the monetary impact on rural providers of the current compliance timeline, and argues extending the timeline for implementation would allow for more cost-effective compliance. A commenter states many of the same concerns, and asserts that its own ongoing experience has yielded negotiation efforts that ''significantly exceed[ ] the Commission's . . . estimate'' and that implementation and testing ''requires tens of dozens of hours or more of dedicated network engineer time for each and every potential RuD partner.'' It also expresses concern that timely compliance may be a challenge, and perhaps contrary to national security considerations, where a provider with whom an RuD is to be negotiated is subject to ''Rip and Replace'' obligations due to the presence of Chinese-manufactured network equipment.

As to the Report and Order's use of ''small'' and ''non-small'' designations to assign differing compliance timeframes, commenters support the Petition's request to replace these designations with ''the long-standing and well-understood definitions of 'nationwide' and 'non-nationwide' wireless providers in the context of wireless 9–1–1 accuracy.'' Others call the Commission's non-small and small distinctions of providers too ''narrow'' and do not find that the definitions can ''recognize the extent of the burden the new rules will place on small and regional providers that may have 1,500 or more employees . . . but [will still] be challenged to achieve compliance within the deadlines imposed by the [Report and Order].'' A commenter also asserts that companies like itself that have large employee counts across affiliated businesses may in reality only have small resources attached to their telecommunications-specific enterprises.

Decision. The Order on Reconsideration agrees with Petitioners and commenters that an extension of time is warranted in order for providers to timely implement elements of the MDRI. For the reasons discussed below, the Order on Reconsideration establishes a single, date certain of May 1, 2024 for compliance with all elements of the MDRI regardless of the size of the provider (in the unlikely event that PRA review remains pending on May 1, 2024, set the compliance date for all elements of the MDRI will be 30 days following publication of an announcement that OMB review is completed).

As the record reflects, some providers will likely need additional time to coordinate with other providers, conduct testing, and establish new mutual aid relationships. As Petitioners and commenters also note, certain elements of the MDRI require expenditure of more time and effort initially compared to later on when these agreements and arrangements will be more established and routine. As such, while the Commission is persuaded that a reasonable extension is appropriate to accommodate the concerns expressed by providers, we do not believe that the lengthy extension requested is justified or necessary, and may unreasonably delay the benefits of the MDRI. The Order on Reconsideration finds that a May 1, 2024, compliance date should afford providers more flexibility to allocate their resources to meet the MDRI's requirements while still supporting the need for prompt execution of these agreements and responsibilities in support of disaster response and preparedness.

In particular, the Commission finds that the Petitioners' full requested timeframes would unreasonably delay the benefits of the MDRI, and would likely result in a compliance date more than two and a half years from the adoption of the Report and Order for most providers, eclipsing not only the 2023 hurricane season (defined as from June 1 to November 30) and the 2023 wildfire season (generally during the summer months, or later in Western states) but the entirety of hurricane and wildfire seasons in 2024 as well. This would place wireless consumers impacted by these disaster scenarios at greater risk for being unable to reach

911, call for help, or receive emergency information and assistance. While there are costs associated with these obligations both in terms of monetary and other resource commitments for subject providers, the Commission continues to find that the benefits outweigh these costs. The timeframe requested by Petitioners, moreover, unreasonably dilutes those benefits in a context in which prompt action is likely to save lives and property.

In setting a single deadline, the Order on Reconsideration further finds the distinction between small and non-small providers is no longer necessary to perpetuate for two reasons. First, whereas non-small providers were originally afforded 6 months (March 30, 2023) and small providers were afforded 9 months (June 30, 2023) initially providing different compliance dates based on provider size, the Report and Order contemplated a singular date if OMB review were delayed beyond these timeframes. As OMB has not yet completed its review at the time of the Report and Order, the singular date contingency had materialized. Second, the Order on Reconsideration finds this outcome largely consistent with the ultimate outcome advocated by Petitioners when their requests are taken as a whole. That is, if one accepted Petitioners' request to use nationwide/non-nationwide distinctions for purposes of the MDRI, and clarified that in all instances where a nationwide and non-nationwide provider were parties to a negotiation warranted a longer compliance timeframe, this would result in virtually all negotiations being subject to the longer timeframe except in those very few instances when a nationwide provider is negotiating with another nationwide provider. It is far simpler, and equally equitable, to provide a common timeframe across all scenarios.

Commenters further note that additional time has been afforded to small providers for compliance in other contexts, *e.g.,* with respect to certain E911 and Wireless Emergency Alert (WEA) obligations. The Order on Reconsideration finds those examples inapposite here. In the E911 and WEA context, newly required obligations involved the potential for network modifications and upgrades or equipment availability in a way that is not present or relevant here.

The Petition and related comments further argue that the 200-hour estimate provided by the Commission did not properly account for the amount of time and resources necessary for entering into multiple bilateral RuD and mutual aid arrangements and to complete roaming testing. In particular, Petitioners and commenters claim that the estimate does not properly account for the complexity of negotiating and executing the required arrangements for many regional and local providers, *e.g.,* providers may have to negotiate arrangements and complete roaming testing with a large number of providers, some providers do not have existing agreements with other providers and may need to address unanticipated complexities or include terms unique to certain disaster contexts, and some providers lack the resources to negotiate agreements and conduct testing with multiple providers at the same time.

The Order on Reconsideration disagrees with Petitioners' view that the Commission did not appropriately account for the level of likely burden on providers in the Report and Order. In reaching its conclusion, the Report and Order specifically took into account assertions by small and regional entities regarding actions already undertaken to engage in storm preparation, information and asset sharing as well as their assertions that many ''already abide'' by the principles on which the MDRI is based, concluding that setup costs would be limited, and otherwise noting examples in the record around existing efforts, time and resources expended in support of the activities codified in the MDRI. As such, it was reasonable to assume that providers existing engagements could be levied in support of these obligations, and accordingly providing a reasoned estimate associated with the actions required by regional and local providers to update or revise their existing administrative and technical processes to conform to processes required the MDRI. Further, the Report and Order noted the lack of record comment regarding recurring costs. As such, we do not believe the Report and Order erred in its conclusion.

However, even taking as true Petitioners assertion that the Report and Order miscalculated the burden, and considering the additional arguments presented regarding complexity and limited resources and the possible need to negotiate serially, the Order on Reconsideration finds the extension granted accounts for the additional burdens that Petitioner and commenters have asserted (the date extension for implementation of the MDRI should address concerns surrounding small providers and the 200-hour estimated burden).

Petitioners also argue that the Commission has departed from its own precedent by establishing a compliance deadline for entering into roaming agreements. The Order on Reconsideration disagrees and finds that there is a compelling public interest in ensuring the availability of networks during a disaster justifies the need for an established deadline. An open ended timeframe in this regard also fails to take into account the need to enhance and improve disaster and recovery efforts on the ground in preparation for, during, and in the aftermath of disaster events, including by increasing predictability and streamlining coordination in recovery efforts among providers.

Additional Small Provider Considerations. The Order on Reconsideration also finds that the bargaining inequity posited by smaller providers in their comments with respect to the roaming arrangements and mutual aid agreements is also mitigated by the extension granted. Moreover, RuDs and mutual aid agreements in this context are required to adhere to a reasonableness standard, with negotiations conducted in good faith, with disputes and enforcement provided for before the Commission. The Order on Reconsideration finds that these safeguards adequately address these concerns. With respect to the argument that small providers in particular may need to conduct negotiations serially rather than simultaneously due to resource constraints, the Commission does not find that this circumstance alone prevents timely compliance, and Petitioners and commenters do not provide sufficient evidence that sequential negotiations for some subset of providers requires industry-wide revisions of compliance timeframes. Moreover, the extension of time should accommodate the need for smaller providers to serially negotiate if necessary.

Rip and Replace. As to the possibility that a provider's need to complete ''Rip and Replace'' activities prior to implementing or completing initial testing of RuD or mutual aid arrangements under the MDRI could delay timely compliance, the Commission expect that these instances are specific enough to be addressed in a petition for waiver, in response to which the Bureau could consider whether special circumstances justify an appropriate delay.

Related Requests for Clarification. Finally, in establishing the singular compliance date for all facilities-based mobile wireless providers, it is unnecessary to address Petitioners' other requests. In particular, the Petitioners' request the Commission reconsider its use of ''small'' versus

''non-small'' delineations preferring the use of ''nationwide'' and ''non-nationwide'' as used in the 911 context instead. However, the adoption of a unified implementation timeline for all providers makes differentiating between providers irrelevant. Similarly, their request for clarification as to the applicable timeframes when parties to an RuD arrangement or roaming testing include one small and one non-small provider is also unnecessary, as all providers are subject to the same revised compliance date. While the Commission also disagrees that the compliance timeframes adopted in the Report and Order are in any way unclear, and therefore that the Commission should ''reaffirm'' the applicability of the PRA timeframes to particular provisions of the rule, the Order on Reconsideration grant dispensation to all parties by extending the May 1, 2024 compliance date to all provisions of § 4.17. (To the extent providers have professed disagreement or confusion as to the applicability of the PRA to a particular element of § 4.17, we forbear from enforcement action for any violations that may have occurred during the pendency of the Petition and until the new compliance date occurs.) It should be noted that § 4.17(e) previously set forth a separate compliance date for the requirement to enter into mutual aid arrangements, but in modifying the implementation timing and to provide clarity, the Commission finds it most logical for all elements of the MDRI to have the same timing (see para. 25, supra, ''Providers must have mutual aid arrangements in place within 30 days of the compliance date of the MDRI''). In the Order on Reconsideration, the Commission eliminates the distinction between the mutual aid arrangement requirement and the other requirements under the MDRI to provide clarity and simplicity for implementation. In doing so, the Commission provides a clear date to eliminate confusion, give providers extra time for implementation and provide certainty not only to Petitioners and commenters as to the scope and timing of their obligations, but to the public safety and related incident planning and response organizations that support communities during disasters, and the public that relies on these networks. Petitioners' other argument that the entire rule implicates PRA shall be resolved through the PRA process.

List of Providers Subject to the MDRI

The Petitioners ask that the Commission ''[p]rovide a list of potential facilities-based mobile wireless providers to which the MDRI may apply, so that providers can determine with more certainty the scope of their obligation to execute Roaming under Disaster ('RuD') arrangements with all 'foreseeable' wireless providers.'' Further, Petitioners ask the Commission to ''publish the list on the FCC's website'' and request that they ''update the list on a regular basis.'' As detailed below, the existing public information published by the Commission in connection with its Form 477 information collections and available to Petitioners and other providers adequately identify those potentially subject to the MDRI. This resource coupled with other public information available to Petitioners, as well as the additional clarification we offer below on when roaming may be ''foreseeable'' for MDRI purposes, provides adequate clarity in the Commission's view for Petitioners to execute their obligations.

Background. Petitioners argue that providers need a Commission-generated list to ensure they are engaging with all other providers for required RuDs, mutual aid agreements, and testing of roaming under § 4.17. The Petition states that a failure to do so frustrates both providers and the Commission's goals of the Report and Order and creates a challenge to determining whether providers have reached compliance with the MDRI. In particular, they assert that they have spent resources on determining foreseeable roaming partners using the Commission's estimated number of applicable providers as specified in the Report and Order, but were only able to identify fewer than half of the 63 providers referenced.

Comments. In support the Petition, commenters contend that while roaming is foreseeable ''when two providers' geographic coverage areas overlap,'' there is an issue with small carriers who may know the ''identity of competing service providers in their territory, [but] may not have an existing business relationship with them, and . . . may not know the appropriate legal and/or technical personnel who are responsible for implementing roaming and mutual aid discussions.'' Commenters agree that the list is necessary to ''avoid ambiguity when implementing the MDRI, streamline the initial contact process, [and] clarify regulatory obligations for large and small carriers alike.'' They recommend that the Commission compile the initial list and allow providers to identify appropriate points of contact and to update the list if providers implement new technology, merge with or are acquired by another service provider, or stop offering mobile wireless service. They further suggest that the Commission's Disaster Information Reporting System (DIRS) might serve as a model for collecting and maintaining contact information. In particular, DIRS, ''provides communications providers with a single, coordinated, consistent process to report their communications infrastructure status information during disasters and collects this information from wireline, wireless, broadcast, cable, interconnected VoIP and broadband service providers.'' Another commenter similarly concludes that an ''official and continually updated resource of contact information would streamline the process and clarify obligations for all providers.''

Discussion. The Commission is not persuaded that a Commission-maintained list specifically for this purpose is the most efficient and effective means for providers to identify those other facilities-based mobile wireless providers subject to the MDRI. Petitioners assert that they were unable to identify a full roster of facilities-based mobile providers based on the Commission's estimate that 63 facilities-based mobile wireless providers that are not signatories to the Wireless Resiliency Cooperative Framework would be required to undertake certain activities to comply with the new rule. Specifically, they assert that ''several of the Petitioners' members have worked in good faith, and expended resources and time, through Petitioners and the companies' established business channels, to compile information on the relevant points of contact and subject matter experts for their respective companies and identify contact information for all providers subject to these new requirements'' but that they ''have been able to identify fewer than half of the 63 facilities-based providers that the Resilient Networks Order identifies as subject to the MDRI rules.'' Because they were unable to do so, they argue this should obligate the Commission to take on the responsibility of identifying and maintaining a list of providers subject to the MDRI. However, the information used to provide this estimate in the Report and Order is readily available to providers.

In estimating the number of providers subject to the MDRI, the Report and Order relied on data on the number of entities derived from 2022 Voice Telephone Services Report (VTSR). The information from the VTSR is derived from Form 477 filings made with Commission. The Commission already publishes the underlying list of Form 477 ''Filers by State'' and periodically

updates this information. This pre-existing tool identifies, on a state-by-state basis, those filers subject to Form 477 filing obligations; those marked as ''mobile voice'' providers make up the total utilized by the Commission to estimate those subject to the MDRI. The Commission believes a simple sorting of this information, coupled with a provider's own knowledge of its particular service area, provides sufficient basis for a provider to (1) identify the providers subject to the MDRI; and (2) identify the relevant providers within this set with whom they should engage under the MDRI for establishing RuDs and mutual aid agreements. For example, the Report and Order makes clear that ''each facilities-based mobile wireless provider [shall] enter into mutual aid arrangements with all other facilities-based mobile wireless providers from which it may request, or receive a request for aid during emergencies.'' Utilizing the ''Filers by State'' tool, as well as their geographic knowledge of their own service area, past emergencies, and business relationships, it should be similarly clear to providers which other providers they could potentially receive or request aid from during an emergency.

Foreseeability. To provide additional guidance, the Order on Reconsideration also delineates additional context for considering when it may be ''foreseeable'' for a provider to need to roam onto another provider's network under an RuD. In terms of foreseeability for RuD purposes, the Commission continues to find that a particular provider is in the best position to know with which other providers its coverage area overlaps. In identifying foreseeable roaming partners, a provider should be able to leverage the information about its own coverage to reasonably predict which other providers may wish to enter into bilateral roaming arrangements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers. Indeed, providers have clear competitive incentives to familiarize themselves with competing providers who cater to their geographic area and consumers. In this respect, providers subject to the MDRI could, by way of example, reach out to all providers who are within their geographic service area to help satisfy this obligation. Some commenters appear to concede that geographic overlap is sufficient to understand what constitutes ''foreseeable'' roaming, only citing as an impediment to MDRI implementation that providers may not already have an existing relationship with each other.

Contact information. With respect to the need to identify contacts and establish relationships, nothing in the Report and Order prevents providers from making such information available of their own accord on a website or other such resource. In this respect, the bi-lateral nature of the roaming and mutual aid obligations also dictates that providers will be reaching out to each other, providing multiple avenues for mutual identification. As such, the Order on Reconsideration does not find that the Commission is in a better position than the individual providers to accumulate, collect, or maintain this information.

Moreover, as the same commenters acknowledge, instituting a process for Commission collection and dissemination of this data may have PRA or other privacy implications. The Order on Reconsideration finds that this effort could unreasonably delay the MDRI's implementation, particularly when the alternative is achievable with little burden. It is simpler, more efficient and more logical that providers use existing knowledge of their geographic coverage area, geographic competitors, and existing business relationships to begin implementation immediately without the need for undue delay by waiting for the Commission to re-organize information on an industry-wide basis that already exists with the providers themselves.

The Commission continues to find that the Report and Order requirement for each facilities-based mobile wireless provider to enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active, to be a reasonable basis by which providers can identify potential RuD partners. And while the Report and Order is clear that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap, we refine this explanation to acknowledge that radio frequency propagation may result in some variables as to coverage area contours. In this respect, coverage areas in this context overlap where a provider ''knows or reasonably should have known'' that its ''as-designed'' network service area overlaps with the service area of another provider. For instance, a provider should be able to reasonably predict which other providers may wish to enter into bilateral roaming agreements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers, being aware of competing providers who cater to their geographic area and consumers, or other similar engagements.

Notification of MDRI Activation

The Petition requests that the Commission ''[e]stablish the process that [the Bureau] will use to inform facilities-based wireless providers that [the] MDRI is active, including by providing notice via email to facilities-based wireless providers.'' Petitioners argue that ''it is critical that all facilities-based wireless providers are immediately aware of such an activation through automatic electronic notifications.'' They further state that the Commission already uses a similar process to notify providers of the activation of its Disaster Information Reporting System (DIRS). As described below, we decline to establish a specific mechanism to provide direct alerts for MDRI activation. Rather, the Order on Reconsideration finds the existing widely utilized and public notification mechanisms sufficient to afford prompt notice of MDRI activation.

Background. The MDRI is activated when (i) any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, (ii) the Commission activates the Disaster Information Reporting System (DIRS), or (iii) the Commission's Chief of the Public Safety and Homeland Security Bureau issues a Public Notice activating the Mandatory Disaster Response Initiative (MDRI) in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency. The Report and Order delegated authority to the Bureau to issue a Public Notice effectuating the MDRI under these circumstances but did not provide a specific manner in which the Commission might otherwise notify providers.

Comments. Some commenters agree Petitioners' request for the Commission to base its notice procedures for the MDRI's activation ''on the practice currently used for activating the Disaster Information Reporting System [(DIRS)] . . . [citing the importance] that all facilities-based wireless providers are made aware of such an activation.'' One commenter further opines that small providers would have the flexibility to

''designate multiple points of contact to receive such notices,'' which would ensure that providers are aware of activation and could act accordingly. Another commenter is also in agreement, explaining that ''the FCC should . . . provide notice of activation . . . directly by email from [PSHSB] staff to designated carrier points of contact.''

Discussion. The Petitioners claim that automatic electronic notification is necessary to (1) make sure that all facilities-based wireless providers are immediately aware of the MDRI activation and to (2) provide small wireless providers with the flexibility to designate multiple points of contact to receive notice of the MDRI activation, which will ensure the effectiveness of the system. The Commission is not persuaded that obligating the Commission to notify providers subject to the MDRI directly of its activation through electronic notification is necessary, and decline to modify the Report and Order in this regard.

In so deciding, the Commission notes that the Petition's comparison to DIRS operating procedures is not applicable in this instance. Unlike MDRI activations, DIRS is a voluntary reporting system where the responsibility and decision to report information sits with the providers themselves and not the Commission. While the Bureau similarly issues a Public Notice when DIRS is activated, sharing DIRS activation status, like the email notification provided to DIRS registrants, is merely a courtesy incidental to the purpose of the system. The primary mechanism remains the Public Notice, and the various routine publication and distribution venues employed for all Commission documents such as the Daily Digest and the Commission website. While the Order on Reconsideration declines to require it here, the Commission fully anticipates that the Bureau would similarly employ additional methods when available and appropriate to the circumstance to widely disseminate information regarding MDRI activation.

While the Commission agree that it is in the public interest to broadly publicize MDRI activation, existing pathways are sufficient as they are now and providers hold the primary responsibility to be aware of their obligations. As such, the Order on Reconsideration declines to revise our determination that a Public Notice issued by the Bureau is appropriate legal notice triggering MDRI obligations. However, to the extent that DIRS or NORS may be able to provide a relevant vehicle for the Bureau to provide courtesy MDRI activation notice, the Order on Reconsideration directs the Bureau to consider its feasibility.

Confidential Treatment of RuDs

Background. The Petitioners ask the Commission to affirm that it ''will treat RuD arrangements provided under § 4.17(d) as presumptively confidential.'' In particular, Petitioners claim that presumptive confidentiality for RuDs is appropriate because (1) the RuDs contain commercially sensitive and proprietary information that providers customarily treat as confidential; (2) the Commission treats roaming agreements as presumptively confidential under the existing data-roaming rules; and (3) the Commission treats analogous information submissions as presumptively confidential. Blooston Rural Carriers also favor a presumption of confidentiality. The Order on Reconsideration agrees, and clarifies that such submissions will be treated as presumptively confidential.

Discussion. Under the Report and Order, RuDs are not routinely submitted and are provided to the Commission only on request. As such, the Commission found it sufficient to consider confidentiality of such submissions on an ad hoc basis when requested by a submitting party. Petitioners correctly point out, however, that submissions to the Commission of data roaming agreements are afforded presumptively confidential treatment, and they further argue that RuDs may be incorporated into broader roaming arrangements. (See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order, 26 FCC Rcd 5411, 5450, para. 79 (2011) (''[I]f negotiations fail to produce a mutually acceptable set of terms and conditions, including rates, the Commission staff may require parties to submit on a confidential basis their final offers, including price, in the form of a proposed data roaming contract.'') They also assert that such treatment for both RuDs and mutual aid agreements would be consistent with the treatment for outage information supplied under other provisions of the Commission's part 4 rules. The Order on Reconsideration concurs that RuD submissions are likely to contain the same types of sensitive trade secret or commercial and financial information we have found in other contexts to merit such a presumption. As such, the Commission reconsiders its prior ad hoc approach, and will afford a presumption of confidentiality to RuDs filed with the Commission.

II. Procedural Matters

A. Paperwork Reduction Act

The Order on Reconsideration does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). This document may contain a non-substantive and non-material modification of information collection requirements that are currently pending review by the Office of Management and Budget (OMB). Any such modifications will be submitted to OMB for review pursuant to OMB's non-substantive modification process.

B. Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Resilient Networks Notice) released in October 2021. The Commission sought public comment on the proposals in these dockets in the Resilient Networks Notice. No comments were filed addressing the IRFA. In the Resilient Networks Report and Order and Further Notice of Proposed released in July 2022 (Report and Order) the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) and sought written comments on the FRFA. No comments were filed addressing the FRFA. In October 2022, the Cellular Telecommunications and Internet Association (CTIA) and the Competitive Carriers Association (CCA) (collectively, Petitioners) filed a Petition for Clarification and Partial Reconsideration (Petition) of the Report and Order which included issues impacting small entities. Several parties filed comments in response to the Petition. A summary of the relevant issues impacting small entities in the Petition, comments and addressed in the Order on Reconsideration are detailed below. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in the Order on Reconsideration, supplements the FRFA included with the Report and Order, and conforms to the RFA.

C. Need for, and Objectives of, the Order on Reconsideration

In the Report and Order, the Commission adopted rules that require all facilities-based mobile wireless providers to comply with the Mandatory Disaster Response Initiative (MDRI), which codified the Wireless Network Resiliency Cooperative Framework (Framework) agreement developed by the wireless industry in 2016 to provide mutual aid in the event of a disaster, and expand the events that trigger its activation. (The Framework commits its signatories to compliance with the following five prongs: (1) providing for reasonable roaming arrangements during disasters when technically feasible; (2) fostering mutual aid during emergencies; (3) enhancing municipal preparedness and restoration; (4) increasing consumer readiness and preparation, and (5) improving public awareness and stakeholder communications on service and restoration status. Under the Report and Order's amended rules, the Mandatory Disaster Response Initiative incorporates these elements, the new testing and reporting requirements and will be activated when any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission's Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.)

The Report and Order also implemented new requirements for testing of roaming capabilities and MDRI performance reporting to the Commission. These actions were taken to improve the reliability, resiliency, and continuity of communications networks during emergencies. Further, the requirements uniformized the nation's response efforts among facilities-based mobile wireless providers who prior to the Report and Order, implemented the Framework on a voluntary basis. Recent weather events and other natural disasters such as Hurricane Ida, hurricanes and earthquakes in Puerto Rico, severe winter storms in Texas, and hurricane and wildfire seasons generally, continue to demonstrate the continued susceptibility of the United States' communications infrastructure to disruption during such events. Accordingly, the Commission's adoption of the MDRI requirements in the Report and Order sought to implement the appropriate tools to promote public safety, improve reliability of the telecommunications infrastructure during emergency events, improve provider accountability as well as increase Commission awareness.

In the Order on Reconsideration, in response to Petitioners' and commenters' request for an extension of time for implementing roaming arrangements and mutual aid agreements, the Commission provided an extension for all providers, regardless of size, and implement a single, uniform compliance date of May 1, 2024 for all providers to comply with § 4.17. With this extension the Commission eliminates the distinction between small and non-small providers as previously distinguished in the Report and Order. Whereas small providers had originally been granted a longer timeline of nine months for implementation in comparison to the six months granted for non-small providers in the Report and Order, on reconsideration the extension we grant will result in all providers having almost two years from the date of publication of Report and Order in the **Federal Register** to comply with the relevant MDRI requirements. Further, the extension should allow small providers the additional time to manage resources and take the other necessary steps to meet these requirements. Additionally, the Commission has and continues to encourage large providers to assist small providers with the implementation process, and believes the rules as clarified in the Order on Reconsideration continue to take into account the unique interests of small entities as required by the RFA.

The Order on Reconsideration also furthers the Commission's efforts to address the findings of the Government Accountability Office (GAO) concerning wireless network resiliency. As we discussed in the Report and Order, in 2017, the GAO, in conjunction with its review of federal efforts to improve the resiliency of wireless networks during natural disasters and other physical incidents, released a report recommending that the Commission should improve its monitoring of industry efforts to strengthen wireless network resiliency. The GAO's conclusion that more robust measures and a better plan to monitor the Framework would help the FCC collect information on the Framework and evaluate its effectiveness resulted in several inquiries and investigations by the Bureau to better understand and track the output and effectiveness of the Framework, and other voluntary coordination efforts that promote wireless network resiliency and situational awareness during and after weather events and other emergencies. (Following Hurricane Michael, for example, the Bureau issued a report on the preparation and response of communications providers finding three key reasons for prolonged outages during that event: insufficiently resilient backhaul connectivity; inadequate reciprocal roaming arrangements; and lack of coordination between wireless service providers, power crews, and municipalities.) The Commission's actions on reconsideration to move forward with the MDRI requirements adopted the Report and Order continue to further the Commission's monitoring, oversight and efforts to improve wireless network resiliency by the industry.

D. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically address the proposed rules and policies in the IRFA. However, as we mention above, in response to the final rules adopted in the Report and Order, the CTIA and CCA Petition and comments were filed involving issues impacting small entities. Specifically, the Petitioners requested that the Commission align the definitions of 'non-small facilities-based' and 'small facilities-based' mobile wireless providers with the Commission's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9–1–1 context, clarify the small provider compliance date applies when parties to a negotiation include one small and one non-small provider, and extend the deadline for implementing the new MDRI requirements for small and other wireless providers. Regarding these requests, the compliance deadline extension adopted in the Order on Reconsideration negated the need for the Commission to rule on the other two requests.

Petitioners also requested that the Commission publish and maintain a list of providers subject to the MDRI, provide direct, individual notification to providers when the MDRI is activated, and treat as confidential on a presumptive basis provider Roaming under Disaster arrangements (RuDs). In the Order on Reconsideration, the Commission determined that only confidential treatment on a presumptive basis for provider RuDs is warranted and decline to adopt further revisions. Specifically, the Commission declined

to adopt the Petitioners' and commenters' other requests first finding that having the Commission maintain and publish a list is neither an efficient or effective way for providers to identify other facilities-based wireless providers who are subject to the MDRI. Second, the Commission continue to maintain the view that awareness of MDRI activation is the responsibility of providers, and having the Bureau issue notice via a Public Notice is sufficient.

E. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

F. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

As noted above, a FRFA was incorporated in the Report and Order. In the FRFA, the Commission described in detail the small entities that might be significantly affected by the Report and Order. Accordingly, in this Supplemental FRFA, the Commission incorporated by reference from the Report and Order the descriptions and estimates of the number of small entities that might be impacted by the Order on Reconsideration.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The requirements from the Report and Order the Commission upholds on reconsideration in today's Order on Reconsideration will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. The rules require all facilities-based mobile wireless providers to make adjustments to their restoration and recovery processes, including contractual arrangements and public outreach processes, to account for MDRI. The mutual aid, roaming, municipal preparedness and restoration, consumer readiness and preparation, and public awareness and stakeholder communications provisions codified and implement the flexible standard in voluntary Framework developed by the industry. In accordance with the Safe Harbor provision we adopted in the Report and Order, pursuant to § 1.16 of the Commission's rules providers maintain the ability to file a letter in the any of dockets associated with this proceeding asserting that they are in compliance with the Framework's existing provisions, and have implemented internal procedures to ensure that it remains in compliance with the provisions. Further, small and other providers remain obligated to comply with the provision from the Report and Order that expands the events that trigger its activation and that require providers test and report on their roaming capabilities to ensure that the MDRI is implemented effectively and in accordance with the Commission's rules.

On reconsideration, the modifications in the Order on Reconsideration did not impact or change the cost of compliance analysis and estimates for small and other providers made in the Report and Order and therefore, the Commission does not repeat them. As we discussed in the initial FRFA in this proceeding, the MDRI rules only apply to facilities-based mobile wireless providers, which included small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, in our cost estimate discussion in the Report and Order, we estimated costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers and these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

The Commission maintains its conclusion that the benefits of participation by small and other providers likely will exceed the costs for affected providers to comply with the rules adopted in the Report and Order. As recommended in the Report and Order, the Commission encourages non-small providers to assist smaller providers who may not have present aid and roaming arrangements. The Commission also acknowledges concerns commenters that smaller and more rural providers may not have the same resources or time to commit to implementation of the MDRI and the Petition's concern that smaller providers might need to hire additional staff or spend limited resources on external support to execute these arrangements and manage them in an ongoing manner, but the Commission believes granting an extension of time for compliance allows providers of all sizes the necessary timeline for achieving implementation, even on an individualized basis for each agreement that needs to be arranged. The Order on Reconsideration also maintains that the substantial benefits attributable to improving resiliency in emergency situations and the significant impact that is likely to result in the health and safety of the public during times of natural disasters, or other unanticipated events that could impair the telecommunications infrastructure and networks, cannot be overstated.

H. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

The Commission took several steps in the Order on Reconsideration that should minimize the economic impact of compliance with the Report and Order for small entities. On reconsideration the Commission granted an extension of time for small entities to comply with all of the provisions of the MDRI. The Order on Reconsideration adopted a uniform compliance date for all providers which results in approximately twenty months (almost two full years) from the **Federal Register** publication to implement the requirements. This extension accounts for the resource concerns expressed by Petitioners, while maintaining the important role the MDRI requirements play in facilitating the ability of the American public to call for help, and receive emergency information and/or assistance during natural disasters, and other emergency situations. The Commission also granted a presumption of confidentiality for filed RuDs which eliminates the additional step for small entities of having to submit a request for confidential treatment under § 0.459 of the Commission's rules when filing an RuD with the Commission when requested. As discussed above, in the

Order on Reconsideration the Commission considered the other alternatives in the Petitioners' request for clarification and/reconsideration and we declined to adopt any of those approaches. The Commission was not persuaded that the increased Commission involvement, expenditure of Commission resources, and the undue delay in implementing the MDRI which would have occurred had we adopted the alternatives requested by Petitioners and commenters was in the public interest, or outweighed the benefits of moving forward with the MDRI requirements as adopted in the Report and Order.

III. Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 4(n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c, and § 1.429 of the Commission's rules, 47 CFR 1.429, that this Order on Reconsideration *is adopted*.

It is further ordered that part 4 of the Commission's rules, 47 CFR part 4, *is amended* as set forth in the Appendix of the Order on Reconsideration, and that such rule amendments *shall be effective* 30 days after publication in the **Federal Register**.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 4

Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. Amend § 4.17 by revising paragraph (e) to read as follows:

§ 4.17 Mandatory Disaster Response Initiative.

* * * * *

(e) Compliance with the provisions of this section is required beginning May 1, 2024.

[FR Doc. 2024–06092 Filed 3–25–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, 223, and 252

[Docket DARS–2023–0028]

RIN 0750–AK98

Defense Federal Acquisition Regulation Supplement: Replacement of Fluorinated Aqueous Film-Forming Foam (DFARS Case 2020–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that prohibits DoD procurement of fluorinated aqueous film-forming foam containing in excess of one part per billion of perfluoroalkyl and polyfluoroalkyl substances after October 1, 2023, unless an exemption applies.

DATES: Effective March 26, 2024.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 88 FR 67604 on September 29, 2023, to implement section 322(b), (c), and (d) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 322 prohibits DoD procurement of fire-fighting agent containing in excess of one part per billion of perfluoroalkyl and polyfluoroalkyl substances (PFAS) after October 1, 2023, unless an exemption applies. One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Interim Rule

There are no significant changes from the interim rule based on the public comments.

B. Analysis of Public Comments

1. Exemption for Ocean-Going Vessels

Comment: The respondent recommended the exemption for procurement of aqueous film-forming foam (AFFF) for use solely on ocean-going vessels be removed from the final rule.

Response: The respondent's recommendation cannot be accepted because removing the exemption for procurement of AFFF for use solely on ocean-going vessels from the final rule would be inconsistent with implementing section 322. The exemption for use on ocean-going vessels is explicitly stated in section 322.

2. Use of the Term ''PFAS''

Comment: The respondent suggested the rule consistently use the term ''PFAS'' in the context of the statutory prohibition.

Response: Concur. The rule employs the term ''perfluoroalkyl substances and polyfluoroalkyl substances,'' in accordance with the language of section 322, which is also referred to as ''PFAS.''

3. Out-of-Scope Comments

Comment: The respondent suggested manufacturers of PFAS-containing fire-fighting agents would face technical challenges when transitioning to manufacture of PFAS-free fire-fighting agents. The respondent also:

- Opined on the cleanup and remediation of PFAS spills.
- Suggested use of PFAS-containing fire-fighting agents should be criminalized.
- Suggested continued use of PFAS-containing fire-fighting agents in accordance with MIL–PRF–24385F(SH) would hamper military recruitment.
- Provided written materials that describe the dangers of PFAS exposure both to humans, particularly fire fighters, and to the environment and that document the transition of various entities away from use of fluorinated fire-fighting agents.

Response: These comments do not directly relate to implementation of

section 322 and are outside the scope of this rule.

C. Other Changes

The final rule removes the incorrect reference to MIL–PRF–24385F(SH) in favor of stating the statutory standard of perfluoroalkyl or polyfluoroalkyl substances not in excess of one part per billion. The final rule also uses the term ''fire-fighting agent'' consistently throughout the DFARS text within the meaning of the statutory prohibition implemented under this rule. The qualifier ''after October 1, 2023'' is deleted in the final rule as unnecessary because that date has passed.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

The clause at DFARS 252.223–7009, Prohibition of Procurement of Fluorinated Aqueous Fire-Fighting Agent for Use on Military Installations, is prescribed at DFARS 223.7404 for use in solicitations and contracts, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 (48 CFR part 12) procedures for the acquisition of commercial products and commercial services, relating to fire-fighting on military installations. Consistent with the determination that DoD made and discussed in the interim rule with regard to the application of the requirements of section 322 of the NDAA for FY 2020, the clause at DFARS 252.223–7009 applies to contracts at or below the SAT, for the acquisition of commercial products including COTS items, and to the acquisition of commercial services, as defined at Federal Acquisition Regulation 2.101. For a discussion of the rationale for DoD's determination, see the interim rule published in the **Federal Register** (see section I of this preamble).

IV. Expected Impact of the Rule

This rule is not expected to have a significant economic impact on contractors. Businesses have been selling fluorine-free fire-fighting agents in various formulations alongside PFAS-containing AFFF in the commercial marketplace for several years. Some or most of the businesses that have supplied PFAS-containing AFFF to DoD will likely supply fluorine-free agents to DoD. Moreover, DoD has already significantly reduced its use of AFFF. By limiting DoD procurement of AFFF containing detectable amounts of PFAS, this rule both protects DoD personnel from PFAS exposure and limits the possibility of AFFF-related PFAS releases into the environment.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule amends the DFARS to implement section 322 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 322 prohibits DoD procurement of fluorinated fire-fighting agents containing in excess of one part per billion of perfluoroalkyl and polyfluoroalkyl substances (PFAS) after October 1, 2023, unless an exemption applies. Section 322 provides an exemption for fire-fighting agents for use solely onboard ocean-going vessels.

In response to the interim rule, DoD received no comments relating to the initial regulatory flexibility analysis.

This rule is not expected to affect significant numbers of small entities, because DoD has significantly reduced the use of aqueous film-forming foam (AFFF) in the past several years. Data generated from the Federal Procurement Data System for fiscal years 2019 through 2022 indicates that DoD has awarded an average of 32,326 contracts for specific product and service codes related to firefighting supplies, equipment, and services to approximately 643 unique small entities during the three-year period. While DoD is unable to identify how many unique small entities of the 643 currently supply fire-fighting agent to DoD, to the extent they do supply fire-fighting agent, they will most likely continue to do so, whether supplying PFAS-free fire-fighting agent or supplying AFFF under the exemption for use solely on ocean-going vessels. Further, any PFAS-free replacement product will most likely follow existing supply channels.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no practical alternatives that will accomplish the objectives of the statute.

VIII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 213, 223, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 213, 223, and 252, which was published in the **Federal Register** at 88 FR 67604 on September 29, 2023, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 212, 223, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 2. Amend section 212.301 by revising paragraph (f)(ix) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ix) *Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace.* (A) Use the clause

at 252.223–7008, Prohibition of Hexavalent Chromium, as prescribed in 223.7306.

(B) Use the clause at 252.223–7009, Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations, as prescribed at 223.7404 to comply with section 322(b), (c), and (d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

* * * * *

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 3. Revise and republish section 223.7402 to read as follows:

223.7402 Prohibition.

Do not procure any fire-fighting agent that contains in excess of one part per billion perfluoroalkyl substances or polyfluoroalkyl substances. Procurements of fire-fighting agent for use solely onboard ocean-going vessels are exempt from this prohibition.

■ 4. Revise and republish section 223.7403 to read as follows:

223.7403 Procedures.

Contracting officers shall not issue a solicitation for any fire-fighting agent that contains perfluoroalkyl or polyfluoroalkyl substances in excess of one part per billion, unless the requiring activity provides documentation of the exemption at 223.7402. The contracting officer shall maintain the documentation in the contract file.

223.7404 [Amended]

■ 5. Amend section 223.7404 by removing ''Fluorinated Aqueous Film-Forming Foam Fire-Fighting'' and adding ''Fluorinated Fire-Fighting'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Revise and republish section 252.223–7009 to read as follows:

252.223–7009 Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations.

As prescribed in 223.7404, use the following clause:

Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations (Mar 2024)

(a) *Definitions.* As used in this clause, *perfluoroalkyl substances* and *polyfluoroalkyl substances* have the meanings given in section 322(f) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

(b) *Prohibition.* The Contractor shall not provide or use under this contract any fire-fighting agent that contains perfluoroalkyl substances or polyfluoroalkyl substances in excess of one part per billion.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial products and commercial services, relating to fire-fighting on a military installation.

(End of clause)

[FR Doc. 2024–06003 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2024–0008]

RIN 0750–AL92

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2023–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTAs) as determined by the United States Trade Representative (USTR). The trade agreements thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds in the **Federal Register** (88 FR 85718), which are being implemented in this rule:

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$174,000	$6,708,000
FTAs:		
Australia	102,280	6,708,000
Bahrain	174,000	13,296,489
Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	102,280	6,708,000
Chile	102,280	6,708,000
Colombia	102,280	6,708,000
Korea	100,000	6,708,000
Morocco	174,000	6,708,000
Panama	174,000	6,708,000
Peru	174,000	6,708,000
Singapore	102,280	6,708,000
United States-Mexico-Canada Agreement (USMCA)—Mexico	102,280	13,296,489

For several FTAs (*i.e.,* Australia, Chile, Colombia, Singapore, CAFTA–DR, and Mexico), the thresholds for supply contracts have increased from $92,319 to $102,280. This increase causes these thresholds to exceed the Korea FTA threshold of $100,000, where in the past they were below the Korea FTA threshold. As a result, the new threshold amounts no longer align with the language used in the prescriptions at DFARS 225.1101 for some of the alternate contract clauses at DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, as well as the text of the contract clause at DFARS 252.225–7017, Photovoltaic Devices, and the solicitation provision at DFARS 252.225–7018, Photovoltaic Devices—Certificate. Therefore, the corresponding text in these locations has been adjusted to accommodate the new thresholds.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to predetermined formulae to account for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. However, this final rule does not impose any new requirements, or impact the applicability of solicitation provisions or contract clauses, for contracts at or below the SAT, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 (48 CFR 1.501–1), and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule, because the final rule affects the prescriptions for use of the information collection requirements in the solicitation provision at DFARS 252.225–7035, Buy American-Free Trade Agreements-Balance of Payments Program Certificate, and the information collection requirements in the solicitation provision at DFARS 252.225–7018, Photovoltaic Devices—Certificate. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0229, entitled ''DFARS Part 225, Foreign Acquisition and related clauses,'' because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.1101—
■ a. By revising and republishing paragraphs (6) introductory text, (10)(i) introductory text, and (10)(i)(A) and (B);
■ b. By revising paragraph (10)(i)(C);
■ c. By revising and republishing paragraphs (10)(i)(D), (E), and (F), (10)(i)(G)(*1*), and (10)(i)(H)(*1*);
■ d. By revising paragraph (10)(i)(I)(*1*); and
■ e. By revising and republishing paragraphs (10)(i)(J)(*1*), (10)(i)(K)(*1*), and (10)(i)(L)(*1*).

The revisions read as follows:

225.1101 Acquisition of supplies.

* * * * *

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the World Trade Organization Government Procurement Agreement applies, *i.e.,* the acquisition is of end products listed at 225.401–70, the value of the acquisition equals or exceeds $174,000, and none of the exceptions at 25.401(a) applies.

* * * * *

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the items listed at 225.401–70, when the estimated value is less

than $174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Use the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(B) Use the alternate I clause in solicitations and contracts when the estimated value is less than $102,280, except if the acquisition is of end products in support of operations in Afghanistan.

(C) Use the alternate II clause in solicitations and contracts when the estimated value equals or exceeds $100,000 but is less than $174,000, and the acquisition is of end products in support of operations in Afghanistan.

(D) Use the alternate III clause in solicitations and contracts when the estimated value is less than $102,280, and the acquisition is of end products in support of operations in Afghanistan.

(E) Use the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than $174,000, except if the acquisition is of end products in support of operations in Afghanistan.

(F) Use the alternate V clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than $174,000 and the acquisition is of end products in support of operations in Afghanistan.

(G) * * *

(*1*) The estimated value equals or exceeds $100,000 but is less than $174,000; and

* * * * *

(H) * * *

(*1*) The estimated value is less than $102,280; and

* * * * *

(I) * * *

(*1*) The estimated value equals or exceeds $100,000, but is less than $174,000;

* * * * *

(J) * * *

(*1*) The estimated value is less than $102,280;

* * * * *

(K) * * *

(*1*) The estimated value equals or exceeds $102,280 but is less than $174,000; and

* * * * *

(L) * * *

(*1*) The estimated value equals or exceeds $102,280 but is less than $174,000;

* * * * *

225.7017–3 [Amended]

■ 3. Amend section 225.7017–3—

■ a. In paragraph (b) by removing ''$183,000'' and ''(see FAR 25.103(c)'' and adding ''$174,000'' and ''(see FAR 25.103(c))'' in their places, respectively;

■ b. In paragraph (c)(1) by removing ''valued at $25,000 or more''; and

■ c. In paragraph (c)(2) by removing ''$183,000'' and adding ''$174,000'' in its place.

■ 4. Amend section 225.7503—

■ a. By revising and republishing paragraphs (a) introductory text, (b) introductory text, (b)(1) through (4), and (b)(5)(i);

■ b. By revising paragraph (b)(6)(i); and

■ c. By revising and republishing paragraphs (b)(7)(i) and (b)(8)(i).

The revisions read as follows:

225.7503 Contract clauses.

* * * * *

(a) Use the basic or an alternate of the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $6,708,000.

* * * * *

(b) Use the basic or an alternate of the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of $6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Use the basic clause in solicitations and contracts with an estimated value of $13,296,489 or more, unless the acquisition is in support of operations in Afghanistan.

(2) Use the alternate I clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489 unless the acquisition is in support of operations in Afghanistan.

(3) Use the alternate II clause in solicitations and contracts with an estimated value of $13,296,489 or more and is in support of operations in Afghanistan.

(4) Use the alternate III clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489, and is in support of operations in Afghanistan.

(5) * * *

(i) The estimated value is $13,296,489 or more; and

* * * * *

(6) * * *

(i) The estimated value is $6,708,000 or more, but less than $13,296,489; and

* * * * *

(7) * * *

(i) The estimated value is $13,296,489 or more;

* * * * *

(8) * * *

(i) The estimated value is $6,708,000 or more but less than $13,296,489;

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7017 [Amended]

■ 5. Amend section 252.225–7017—

■ a. By removing the clause date ''(NOV 2023)'' and adding ''(MAR 2024)'' in its place;

■ b. In paragraph (c)(1) by removing ''$92,319'' and adding ''$100,000'' in its place;

■ c. In paragraph (c)(2) by removing ''$92,319 or more but less than $100,000'' and adding ''$100,000 or more but less than $102,280'' in its place; and

■ d. In paragraphs (c)(3) and (4) by removing ''$183,000'' and adding ''$174,000'' in its place.

■ 6. Amend section 252.225–7018—

■ a. By removing the provision date ''(NOV 2023)'' and adding ''(MAR 2024)'' in its place; and

■ b. Revising and republishing paragraphs (b) through (d).

The revisions read as follows:

252.225–7018 Photovoltaic Devices—Certificate.

* * * * *

(b) *Restrictions.* The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If more than the micro-purchase threshold but less than $174,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), or (d)(5)(ii) of this provision, unless the Offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $174,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are

U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $102,280, the Offeror's certification that such photovoltaic device (*e.g.,* solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See *https://www.cbp.gov/trade/rulings.*)

(d) *Certification and identification of country of origin. [The Offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]*

(1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than $100,000—

____(i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

____(ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin_____];* or

____(iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(3) If less than $100,000—

__(i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

__(ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin___];* or

__(iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of_____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(4) If $100,000 or more but less than $102,280—

__(i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

__(ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____];* or

__(iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(ii) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(5) If $100,000 or more but less than $174,000—

__(i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

__(ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____];* or

__(iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(5)(ii) of this provision) are the product of _____. *Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(6) If $174,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

__(i) A U.S.-made photovoltaic device; or

__(ii) A designated country photovoltaic device or a qualifying country photovoltaic device. *[Offeror to specify country of origin_____.]*

[FR Doc. 2024–06006 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2023–0037]

RIN 0750–AL84

Defense Federal Acquisition Regulation Supplement: DoD Mentor-Protégé Program (DFARS Case 2023–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that permanently authorizes and modifies the DoD Mentor-Protégé Program.

DATES: Effective March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 73306 on October 25, 2023, to implement section 856 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program

participation and removes the term limitation for mentors to incur costs under mentor-protégé agreements entered into after December 23, 2022. Section 856 does not apply to mentor-protégé agreements entered into prior to December 23, 2022. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comment

Comment: One respondent recommended the rule be amended to allow a protégé to have more than one mentor at a time, as long as the mentors are not competitors and do not have any conflicts of interest. The respondent indicated that this would align with the Small Business Administration (SBA) Mentor-Protégé Program (MPP), which allows a protégé to have two mentors at the same time.

Response: This rule implements section 856 of the NDAA for FY 2023, which is codified at 10 U.S.C. 4902. Paragraph (c)(2) of 10 U.S.C. 4902 indicates that a protégé firm may not be party to more than one mentor-protégé agreement concurrently. This means that a protégé may have only one mentor during the term of an agreement. Therefore, the proposed change is inconsistent with the statute. However, because the statute allows a protégé firm to participate in the DoD MPP for a 5-year period beginning on the date the protégé firm enters into its first mentor-protégé agreement, a protégé may have more than one mentor during the 5-year period as long as the protégé is not a party to more than one mentor-protégé agreement at a time. For example, if a protégé firm enters into a 2-year mentor-protégé agreement with a mentor, then the protégé firm could enter into another mentor-protégé agreement with a different mentor after the conclusion of the first agreement, as long as it did so within the 5-year period and the second agreement does not extend beyond the 5-year period from date the protégé firm entered into its first mentor-protégé agreement. As such, a protégé firm under the DoD MPP may still benefit from having more than one mentor during its participation in the program.

C. Other Changes

Minor editorial changes are made in appendix I, section I–106.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clause at DFARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protégé Program, to remove the word ''Pilot'' from the clause title. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This final rule implements the permanent authorization of and statutory amendments to the DoD Mentor-Protégé Program. The purpose of the program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other Federal Government contracts and subcontracts; and

(2) Increase the participation of small business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and contracts with commercial entities.

Therefore, this final rule will benefit small business concerns that participate in the program by extending the opportunity to enter into DoD Mentor-Protégé agreements and extending the term of the agreements. This final rule is also expected to benefit large entities and DoD by expanding the defense industrial base.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This final rule is necessary to implement section 856 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under agreements entered into after December 23, 2022. The objective of this rule is to implement the permanent authorization of the DoD Mentor-Protégé Program and to make other Program changes.

No significant issues were raised by the public comment in response to the initial regulatory flexibility analysis.

The number of new DoD Mentor-Protégé agreements entered into in FY 2021 was 50, with a total of 104 active agreements; in FY 2022, 29 new agreements were entered into, with a total of 62 active agreements; and in FY 2023, 19 new agreements were entered into, with a total of 69 active agreements. The average number of new agreements entered into during the last three fiscal years was approximately 33, with an average of 78 total active agreements per fiscal year. DoD estimates 44 new agreements will be entered into in FY 2024, with a total of 76 active agreements in place. As of January 5, 2024, there are 62 unique small entities with active agreements. Since the number of small entities that

will enter into new agreements is unknown, DoD cannot provide a more precise estimate of the number of small entities to which this rule will apply.

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

DoD did not identify any significant alternatives to the rule that would accomplish the stated objectives of the statute and that would minimize the significant economic impact of the rule on small entities. DoD does not expect this rule to have a significant economic impact on small entities. Any impact is expected to be beneficial.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0332, DoD Pilot Mentor-Protégé Program.

List of Subjects in 48 CFR Parts 219, 232, and 252 and Appendix I to Chapter 2

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, and 252 and appendix I to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 219, 232, and 252 and appendix I to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

■ 2. Revise the heading for subpart 219.71 to read as follows:

Subpart 219.71—DoD Mentor Protégé Program

■ 3. Revise and republish section 219.7100 to read as follows:

219.7100 Scope.

This subpart implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 [Amended]

■ 4. Amend section 219.7101 by removing ''Pilot''.

219.7103–1 [Amended]

■ 5. Amend section 219.7103–1 by removing ''Pilot''.

219.7103–2 [Amended]

■ 6. Amend 219.7103–2 in paragraph (b) by removing ''Pilot''.

■ 7. Amend section 219.7104 by revising paragraphs (b) and (d) to read as follows:

219.7104 Developmental assistance costs eligible for reimbursement or credit.

* * * * *

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. For mentor-protégé agreements entered into prior to December 23, 2022, to be eligible for reimbursement under the Program, the mentor firm must incur the costs not later than September 30, 2026.

* * * * *

(d) For mentor-protégé agreements entered into prior to December 23, 2022, developmental assistance costs incurred by a mentor firm not later than September 30, 2026, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I. For mentor-protégé agreements entered into on or after December 23, 2022, developmental assistance costs that are eligible for crediting under the Program may be credited toward subcontracting plan goals as set forth in appendix I.

PART 232—CONTRACT FINANCING

232.412–70 [Amended]

■ 8. Amend section 232.412–70 by removing ''Pilot''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 252.232–7005 by revising the section heading and clause heading and date to read as follows:

252.232–7005 Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program.

* * * * *

Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program (Mar 2024)

* * * * *

■ 10. Amend appendix I to chapter 2 by—

■ a. Revising the appendix heading.

■ b. In section I–100, revising paragraph (a) introductory text.

■ c. In section I–102—

■ i. In paragraph (a)(3)(i), removing ''$100 million'' and adding ''$25 million'' in its place;

■ ii. In paragraph (a)(3)(ii), removing ''or'';

■ iii. In paragraph (a)(3)(iii), removing the period and adding ''; or'' in its place; and

■ iv. Adding paragraph (a)(3)(iv).

■ d. Revising and republishing section I–103.

■ e. In section I–106—

■ i. Revising paragraph (d)(1)(ii); and

■ ii. Adding paragraph (d)(6)(vi).

■ f. In section I–107, revising paragraph (k).

■ g. In section I–108, in paragraph (a)(5), removing ''2 years'' and adding ''3 years'' in its place.

■ h. In section I–109, in paragraph (b), removing ''Pilot''.

■ i. In section I–111, in paragraph (a), removing ''Director, OSBP'' and adding ''Director, OSBP, OUSD(A&S) or the Director, OSBP'' in its place.

■ j. In section I–112.2—

■ i. Revising the section heading;

■ ii. Removing paragraph (a)(3); and

■ iii. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revisions and additions read as follows:

Appendix I to Chapter 2—Policy and Procedures for the DoD Mentor-Protégé Program

I–100 Purpose

(a) This appendix implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

* * * * *

I–102 Participant Eligibility

(a) * * *

(3) * * *

(iv) Is otherwise capable to assist in the development of protégé firms and is approved by the Director OSBP, OUSD(A&S).

* * * * *

I–103 Incentives for Mentors

Mentors incurring costs through September 30, 2026, pursuant to a mentor-protégé agreement approved prior to December 23, 2022, and mentors incurring costs pursuant to a mentor-protégé agreement approved on or after December 23, 2023, may be eligible for—

(a) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);

(b) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or

(c) Reimbursement pursuant to entering into a separate DoD contract upon determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify using a separate contract.

* * * * *

I–106 Development of Mentor-Protégé Agreements

* * * * *

(d) * * *

(1) * * *

(ii) Engineering and technical matters such as production, inventory control, manufacturing, test and evaluation, quality assurance; acquisition or transfer of hardware, tooling, or software; and technology transfer and transition; and

* * * * *

(6) * * *

(vi) Manufacturing innovation institutes.

* * * * *

I–107 Elements of a Mentor-Protégé Agreement

* * * * *

(k) A program participation term for the agreement that does not exceed 3 years. The agreement may be extended for a period not to exceed 2 years if approved by the Director, OSBP, OUSD(A&S). The Director, OSBP, of the cognizant military department or defense agency will submit requests for an extension of the agreement to the Director, OSBP, OUSD(A&S) for approval. The request will include a justification describing the unusual circumstances that warrant a term in excess of 3 years;

* * * * *

I–112.2 Program Specific Reporting Requirements

* * * * *

[FR Doc. 2024–06005 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231215–0305; RTID 0648–XD831]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From Virginia to North Carolina

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2024 commercial summer flounder quota to the State of North Carolina. This adjustment to the 2024 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial quotas for Virginia and North Carolina.

DATES: Effective March 25, 2024 through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the final 2024 allocations were published on December 21, 2023 (88 FR 88266).

The final rule implementing amendment 5 to the Summer Flounder FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

Virginia is transferring 11,004 pounds (lb; 4,991 kilograms (kg)) to North Carolina through a mutual agreement between the states. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2024 are: Virginia, 1,865,937 lb (846,375 kg); and North Carolina, 2,409,167 lb (1,092,780 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: March 21, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06422 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240227–0061; RTID 0648–XD802]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 22, 2024, through 1200 hours, A.l.t., June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7416.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

The A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 849 metric tons (mt) as established by the final 2024 and 2025 harvest specifications for groundfish in the GOA (89 FR 15484, March 4, 2024).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 649 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 closure of Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 20, 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 and opportunity for public comment.

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

Dated: March 21, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–06388 Filed 3–22–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 59
Tuesday, March 26, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0635; Airspace Docket No. 23–AWP–20]

RIN 2120–AA66

Modification of Class E Airspace; Yerington Municipal Airport, Yerington, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace area extending upward from 700 feet or more above the surface of the earth at Yerington Municipal Airport, Yerington, NV. This action would support the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before May 10, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0635 and Airspace Docket No. 23–AWP–20 using any of the following methods:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

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

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

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This

document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

Yerington Municipal Airport currently has Class E airspace extending upward from 11,000 feet mean sea level within 10.4 miles southwest and 7 miles northeast of the Mustang very high frequency omni-directional range/tactical air navigation (VORTAC) 135° radial, extending from 9.1 miles northwest to 18 miles southeast of the intersection of the Mustang VORTAC 135° radial and the Lovelock VORTAC 197° radial, excluding the airspace within Federal Airways. This airspace no longer serves a purpose and should be redesigned to appropriately support IFR operations at Yerington Municipal Airport, Yerington, NV.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class E airspace area extending upward from 700 feet or more from the surface of the earth at Yerington Municipal Airport, Yerington, NV, to support the airport's transition from VFR to IFR operations.

Class E airspace area should be modified to extend upward from 700 feet above the surface within a 5.2-mile radius of the airport, within 5.2 miles each side of the airport's 065° bearing extending from the 5.2-mile radius to 8.9 miles northeast of the airport, and within 3 miles each side of the airport's 184° bearing, extending from the 5.2-mile radius to 12.7 miles south of the airport. The proposed airspace would accommodate IFR arrival operations descending through 1,500 feet above the surface and departing IFR operations until reaching 1,200 feet above the surface.

Additionally, line four of the airport's legal description includes references to the Mustang and Lovelock VORTACs that are no longer needed to describe the airspace and should be removed. The Yerington Airport Reference Point should be added to the airspace description in their place.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

AWP NV E5 Yerington, NV [Amended]

Yerington Municipal Airport, NV
(Lat. 39°00′19″ N, long. 111°09′24″ W)

That airspace extending upward from 700 feet above the surface within a 5.2-mile radius of the airport, within 5.2 miles each side of the 065° bearing extending from the 5.2-mile radius to 8.9 miles northeast of the airport, and within 3 miles each side of the 184° bearing, extending from the 5.2-mile radius to 12.7 miles south of the airport.

* * * * *

Issued in Des Moines, Washington, on March 19, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–06198 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0697; Airspace Docket No. 23–AAL–54]

RIN 2120–AA66

Amendment of Alaskan Very High Frequency Omnidirectional Range Federal Airway V–477 in the Vicinity of Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Alaskan Very High Frequency Omnidirectional Range (VOR) Federal Airway V–477 in the vicinity of Ambler, AK. The FAA is proposing this amendment due to the pending decommissioning of the Ambler, AK, Nondirectional Radio Beacon (NDB).

DATES: Comments must be received on or before May 10, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0697 and Airspace Docket No. 23–AAL–54 using any of the following methods:

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

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

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

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

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

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

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

Incorporation by Reference

Alaskan VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of an ongoing, large, and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite-based navigation development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground-based airway navigation.''

As part of this initiative, the Ambler NDB is scheduled to be decommissioned. As a result, a portion of Alaskan V–477 will become unusable. This airspace action proposes to amend the Alaskan V–477 by revoking the portion of the airway that relies on the Ambler NDB.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Alaskan VOR Federal Airway V–477 in the vicinity of Ambler, AK due to the pending decommissioning of the Ambler NDB.

V–477: V–477 currently extends between the Galena, AK, VOR/DME, Huslia, AK, VOR/DME, Selawik, AK, VOR/Distance Measuring Equipment (DME), and the Ambler, AK, NDB. Due to the pending decommissioning of the Ambler NDB, the portion of V–477 between the Selawik VOR/DME and the Ambler NDB will become unusable. As amended, the Alaskan V–477 would extend between the Galena VOR/DME, Huslia VOR/DME, and the Selawik VOR/DME.

Regulatory Notices and Analyses

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

navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–477 [Amended]

From Galena, AK; Huslia, AK; to Selawik, AK.

* * * * *

Issued in Washington, DC, on March 20, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–06230 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 882 and 895

[Docket No. FDA–2023–N–3902]

RIN 0910–AI84

Banned Devices; Proposal To Ban Electrical Stimulation Devices for Self-Injurious or Aggressive Behavior

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to ban electrical stimulation devices (ESDs) intended for self-injurious behavior (SIB) or aggressive behavior (AB). FDA has determined these devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. This proposal follows a court decision vacating a prior ban and amendment to the Federal Food, Drug, and Cosmetic Act clarifying our authority to ban a device for one or more intended uses. This action, if finalized, will mean ESDs for SIB and AB are adulterated and not legally marketed.

DATES: Either electronic or written comments on the proposed rule must be submitted by May 28, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 28, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–3902 for ''Banned Devices; Proposal to Ban Electrical Stimulation Devices for Self-Injurious or Aggressive Behavior.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents, the plain language summary of the proposed rule of not more than 100 words as required by the ''Providing Accountability Through Transparency Act,'' or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527, *Rebecca.Nipper@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to ban ESDs intended for self-injurious behavior (SIB) or aggressive behavior (AB) pursuant to the Agency's authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) after determining that the devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. FDA previously issued a final rule in 2020 banning these devices (2020 Final Rule) (85 FR 13312, March 6, 2020), which was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on July 6, 2021. The D.C. Circuit opined that FDA's authority to ban devices intended for human use under the FD&C Act, as it existed at the time, did not permit FDA to ban a device for some (but not all) of its intended uses. Following the D.C. Circuit's decision, Congress amended the FD&C Act to expressly state that FDA's authority to ban a device includes the authority to ban some intended uses of a device, even if the Agency does not seek to ban it for all intended uses. The amendment to the FD&C Act thereby authorizes FDA to issue a ban that applies to specific intended uses, such as the previous ban on ESDs for self-injurious and aggressive behavior. This proposed rule, if finalized, would reestablish the ban now that it is clear that FDA has the authority to do so.

ESDs are aversive conditioning devices that apply a noxious electrical stimulus (a shock) to a person's skin to condition behavior to reduce or cease SIB and AB. SIB and AB frequently manifest in the same individual, and people with intellectual or developmental disabilities exhibit these behaviors at disproportionately high rates. Notably, some people with intellectual or developmental disabilities who exhibit SIB and AB have difficulty communicating and cannot make their own treatment decisions because of such disabilities, meaning they are part of a vulnerable population.

In issuing the 2020 Final Rule, FDA determined that the medical literature shows that ESDs for SIB or AB pose a number of psychological harms including depression, post-traumatic stress disorder (PTSD), anxiety, fear, panic, substitution of other negative behaviors, worsening of underlying symptoms, and learned helplessness (becoming unable or unwilling to respond in any way to the ESD); and the devices present the physical risks of pain, skin burns, and tissue damage. We also found that other sources, such as experts in the field, State agencies that regulate ESD use, and records from the only facility that has recently manufactured and is currently using ESDs for SIB or AB, indicate that ESDs pose additional risks such as suicidality, chronic stress, acute stress disorder, neuropathy, withdrawal, nightmares, flashbacks of panic and rage, hypervigilance, insensitivity to fatigue or pain, changes in sleep patterns, loss of interest, difficulty concentrating, and injuries from falling. We also determined that state-of-the-art treatments for this patient population have evolved away from ones that include ESD use and toward various positive behavioral treatments, sometimes combined with pharmacological treatments. Although the available data and information suggest that some individuals subject to ESDs exhibit an immediate reduction or cessation of the targeted behavior, the available evidence has not established a durable long-term conditioning effect or an overall favorable benefit-risk profile for ESDs for SIB and AB.

For this proposed rule, FDA has determined that there have been no material changes regarding these topics in the available literature that impact our findings and assessments in the 2020 Final Rule. Accordingly, FDA has determined on the basis of all available data and information that ESDs for SIB or AB present an unreasonable and substantial risk of illness or injury and that such risk cannot be corrected or eliminated by labeling or by a change in labeling. FDA is issuing this proposed rule to give notice of FDA's determination and give interested persons an opportunity to comment on the determination and FDA's proposal to ban ESDs for SIB and AB. All references to section numbers are references to section numbers in this proposed rule unless otherwise specified.

B. Summary of the Major Provisions of the Proposed Rule

We are proposing to amend part 895 (21 CFR part 895) to designate ESDs for SIB or AB as banned devices. If this proposed rule is finalized as proposed, the ban would include only aversive conditioning devices intended to apply a noxious electrical stimulus to a person's skin to reduce or cease aggressive or self-injurious behavior. The proposed ban would apply to devices already in commercial

distribution and devices already in use by the ultimate (end) user, as well as devices to be sold or commercially distributed in the future. A banned device is an adulterated device, subject to enforcement action. Additionally, a device that is banned for one or more intended uses is not legally marketed within the meaning of section 1006 of the FD&C Act (21 U.S.C. 396) when intended for such use or uses. The ban would not, however, prevent further study of such devices pursuant to an investigational device exemption if the requirements for such an exemption are met. We also are proposing conforming edits to 21 CFR part 882 to clarify that ESDs are banned when used to reduce or cease SIB or AB.

C. Legal Authority

We are proposing to issue this rule pursuant to FDA's authority to ban devices intended for human use, as recently amended by Congress. We also are proposing to issue this rule under the authority to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

This proposed rule, if finalized, would reestablish the ban of ESDs for SIB or AB. FDA has determined that these devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling. The proposed rule, if finalized, would apply to both new devices and devices already in distribution and use. Unquantified benefits would include reduction in physical and psychological adverse effects from using ESDs on individuals, as well as benefits to society in terms of protecting vulnerable populations. We quantify costs for the case in which the affected individuals might move to another facility and costs to the affected entities, who use the device on such individuals, to read and understand the rule. We estimate that the annualized costs over 10 years would range from $0.00 million to $9.17 million with a primary estimate of $4.59 million at both a 7 percent and a 3 percent discount rate.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
AB	Aggressive Behavior.
ABA	Applied Behavior Analysis.
ABAI	Association for Behavior Analysis International.
AE	Adverse Event.
DBT	Dialectical Behavioral Therapy.
EA	Environmental Assessment.
ESD	Electrical Stimulation Device.
FA	Analogue Functional Analysis.
FDORA	Food and Drug Omnibus Reform Act of 2022.
FONSI	Finding of No Significant Impact.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
GED	Graduated Electronic Decelerator.
mA	Milliampere.
MSW	Municipal Solid Waste.
PBS	Positive Behavioral Support.
PTSD	Post-traumatic Stress Disorder.
SIB	Self-Injurious Behavior.

III. Background

FDA is proposing to ban certain devices that apply a noxious electrical stimulus to attempt to reduce or stop undesirable, injurious behaviors frequently manifested by vulnerable people. Specifically, this rulemaking would ban ESDs for SIB or AB because the devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling. This is the second ban on these devices we are undertaking to protect and promote the public health. As we will explain in more detail, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the first ban.

A. Introduction

ESDs for SIB or AB give people an often-painful electric shock to try to make them stop behaving in ways that are harmful and/or dangerous and that are often related to other underlying intellectual or developmental disabilities. More specifically, ESDs are a type of aversive conditioning device that apply a noxious electrical stimulus (the shock) to a person's skin in an attempt to reduce or cease self-injurious or aggressive behaviors. SIB commonly includes head-banging, hand-biting, excessive scratching, and picking of the skin. However, SIB can be more extreme and result in bleeding; broken, even protruding bones; blindness from eye-gouging or poking; other permanent tissue damage; or injuries from swallowing dangerous objects or substances. AB can involve repeated physical assaults and can be a danger to the individual, others, or property. In this proposed rule, like much of the scientific literature, we discuss SIB and AB in tandem and use the phrase ''SIB or AB'' to refer to SIB, AB, or both. A more detailed discussion of SIB and AB and intellectual or developmental disabilities as they relate to individuals with SIB or AB can be found in section I.B of the previous proposed rule to ban these devices (2016 Proposed Rule) (81 FR 24386 at 24389).

ESDs that are subject to this proposed ban are intended to reduce SIB or AB according to the principle of aversive conditioning. Aversive conditioning pairs a noxious stimulus (such as, here, a noxious electric shock delivered to an individual's skin) with a target behavior; the goal is that the individual eventually associates the noxious stimulus with the behavior. Pairing a target behavior with shocks from an ESD is intended to affect behavior in two ways: by interrupting the target behavior as an immediate response to the stimulus—for example, in response to pain—and, over time, through a conditioned reduction in the target behavior if the person learns to associate the shock with the target behavior (and can learn to control the behavior). Associating the unwanted behavior with the shock is intended to decrease the frequency of the behavior or stop it altogether.

However, as explained here, ESDs pose a number of serious risks and have not been shown to be effective, and modern treatments for SIB or AB have been generally successful without involving the use of ESDs. State-of-the-art treatments instead include conducting a functional behavioral assessment to determine the causes and triggers of self-injury or aggression, then using that information to design a plan with supportive approaches, consisting of multiple elements, to modify the behavior. In some cases, pharmacotherapy is an appropriate element of a treatment plan, depending on the specific patient. These approaches have generally been successful, even for some of the most difficult cases. The use of ESDs was mostly abandoned decades ago, in part because the shocks can be painful or very painful for the recipients. Only one facility in the United States still applies these devices to individuals.

Although in 2018 a Massachusetts court found, for the purpose of considering whether to lift a consent decree, that there was no professional consensus as to whether ESDs are part of standard of care for treating individuals with intellectual and developmental disabilities,[1] the professional consensus regarding the accepted standard of care and such use of ESDs is not an issue in this rulemaking (see discussion in the 2020 Final Rule, 85 FR 13312 at 13314 through 13315). Rather, to ban a device

[1] On September 7, 2023, the Supreme Judicial Court of Massachusetts considered the narrow question of whether the probate judge abused her discretion in making that finding based upon the evidence before her at the time of that decision (all of which was from 2016 and earlier), and concluded that she had not. See *Judge Rotenberg Educational Center, Inc.* v. *Commissioner of the Department of Developmental Services,* 492 Mass. 772 (September 7, 2023).

under section 516 of the FD&C Act (21 U.S.C. 360f), FDA must determine the device presents an ''unreasonable and substantial risk of illness or injury.'' In making this determination, FDA analyzes whether the risks the device poses to individuals are important, material, or significant in relation to its benefits to the public health, and FDA compares those risks and benefits to the risks and benefits posed by alternative treatments being used in current medical practice (which relates to what FDA refers to as ''the state of the art'') (85 FR 13312 at 13315; 81 FR 24386 at 24388). The purpose of considering the alternatives used in current medical practice to treat a particular patient population is to assess and compare the risks and benefits of those alternatives to the risks and benefits of the device that is the subject of the ban, not to determine whether the device that is the subject of the ban is part of the standard of care or state of the art. For these reasons, as stated in the 2020 Final Rule, whether punishment, contingent shock, or ESDs are within the standard of care or state of the art is not an issue in this rulemaking (85 FR 13312 at 13341). In sum, the court's decision has no legal or scientific bearing on this proposed ban.

B. Need for the Regulation

This rulemaking would protect and promote the public health by banning ESDs for SIB or AB, which would prevent this patient population from being subjected to a device that poses a substantial and unreasonable risk of illness or injury. As we explained in the previous rulemaking to ban ESDs for SIB and AB, people who manifest SIB or AB often have intellectual and developmental disabilities including, but not limited to, autism spectrum disorder, Down syndrome, or Tourette syndrome, as well as other cognitive or psychiatric disorders and severe intellectual impairment (including a broad range of intellectual measures) (see, *e.g.,* 81 FR 24386 at 24389). Notably, some people with such intellectual and developmental disabilities may have difficulty communicating and may not be able to make their own treatment decisions because of such disabilities (see, *e.g.,* 85 FR 13312 at 13329). This, among other reasons, means that many people who exhibit SIB or AB constitute a vulnerable population. For people who manifest SIB or AB, ESDs intended for those conditions present a substantial and unreasonable risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling. As such, a ban on these devices for these intended uses is warranted.

As discussed in section IV below, section 516(a) of the FD&C Act authorizes FDA to ban a device for one or more intended uses, by regulation, if we find, on the basis of all available data and information, that such a device presents substantial deception or an unreasonable and substantial risk of illness or injury. Accordingly, based on the serious risks posed by ESDs for SIB or AB, the inadequacy of data to support their effectiveness, and the positive benefit-risk profiles of the state-of-the-art alternatives for the treatment of SIB or AB, FDA has determined that ESDs present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. The proposed rule would apply to devices already in distribution and use, as well as to future sale and distribution of these devices. The purpose of this notice is to seek comments on FDA's proposal to ban ESDs used for SIB or AB and comments on any other associated issues. Section V of this document discusses the information and data that support these proposed findings.

C. FDA's Current Regulatory Framework

The FD&C Act, as amended by the Medical Device Amendments of 1976 (1976 Amendments) (Pub. L. 94–295), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act establishes three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (special controls), and class III (premarket approval) (see 21 U.S.C. 360c).

In 1979, FDA classified aversive conditioning devices as class II (see § 882.5235 (21 CFR 882.5235)), which was consistent with the recommendation of the Neurological Device Classification Panel in 1978. Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act).

Aversive conditioning devices, as a device type, administer an electric shock or another noxious stimulus to a patient to modify undesirable behavioral characteristics (see § 882.5235). Thus, ESDs intended for SIB and AB, which administer shocks to modify target behaviors, are within the aversive conditioning device classification regulation. As discussed in more detail in section I.D. of the previous proposed rule (81 FR 24386 at 24391), in the late 1970s, FDA and the panelists of the Neurological Device Classification Panel believed that performance standards could adequately assure the safety and effectiveness of aversives and proposed a classification accordingly. We received no comments from the public on the proposed rule, and we issued the final rule classifying aversives as proposed at § 882.5235 (44 FR 51726 at 51765, September 4, 1979).

As we explained during the previous rulemaking to ban ESDs for SIB and AB, and as remains true, FDA now has a better understanding of the risks and benefits presented by these devices than we did 44 years ago when these devices were classified. As summarized in section III.B and explained more fully in section V.E. of the 2020 Final Rule, the state of the art for the treatment of SIB and AB has progressed significantly over that time period (85 FR 13312 at 13337 through 13344). The development of the scientific literature and treatments for these conditions only underscores that the risk of illness or injury from the use of ESDs for SIB and AB is unreasonable and substantial.

D. History of the Rulemaking

FDA previously banned ESDs for SIB and AB in a final rule issued on March 6, 2020, pursuant to the Agency's authority under section 516 of the FD&C Act (85 FR 13312 at 13354). Specifically, section 516 of the FD&C Act provides that FDA may ban a device intended for human use if the Agency determines that the device presents substantial deception or an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or change in labeling. Leading up to the final ban, FDA held a public meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee on April 24, 2014 (see 79 FR 17155, March 27, 2014) (Ref. 1), issued a proposed ban in the **Federal Register** of April 25, 2016, and considered comments on the proposal from interested stakeholders (81 FR 24386). These activities garnered significant interest, and FDA received and reviewed voluminous information to develop the final rule banning ESDs for SIB and AB.

FDA issued the 2020 ban because we determined, based on all available information and data at that time, that ESDs for SIB or AB present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling. FDA found the weight of the evidence indicates that ESDs for SIB or AB present a number of psychological and physical risks. We determined the evidence does not establish that ESDs improve the underlying causative disorder or effectively condition individuals to achieve durable reduction of SIB or AB for a clinically meaningful period of time. FDA also found the weight of the evidence indicates that the state-of-the-art treatment for individuals with SIB or AB relies on multielement positive interventions, for example, paradigms such as positive behavior support (PBS) or dialectical behavioral therapy (DBT), sometimes in conjunction with pharmacological treatments (85 FR 13312 at 13315 and 13337). Even in cases in which behavioral modification plans include punishment techniques, the techniques are significantly less intrusive than ESDs and do not inflict pain; for example, they include timeouts.

Following the publication of the 2020 ban, the sole manufacturer and only facility to use ESDs for SIB and AB, The Judge Rotenberg Educational Center, Inc. (JRC), challenged in court FDA's authority to issue the 2020 ban. On July 6, 2021, the D.C. Circuit vacated the 2020 ban. See *Judge Rotenberg Educational Center, Inc.* v. *FDA,* 3 F.4th 390 (D.C. Cir. 2021). The court interpreted section 516 of the FD&C Act, as it existed at the time, and section 1006 of the FD&C Act, as not permitting FDA to ban devices for specific intended uses, in that instance ESDs for SIB or AB, without banning the device for all intended uses.

Following the court's decision, Congress enacted the Food and Drug Omnibus Reform Act of 2022 (FDORA) (Pub. L. 117–328). FDORA amended section 516(a) of the FD&C Act to expressly state that FDA's authority to ban a device intended for human use includes the authority to ban a device for one or more intended uses, and that a device banned for one or more intended uses is not a legally marketed device under section 1006 of the FD&C Act. As amended, the statute is clear that FDA may issue a ban such as the previous ban on ESDs for SIB or AB, which applies to one or more specific intended uses. After reviewing publications and other information that have become known to the Agency in the brief interim between the issuance of the previous ban in 2020 and now, and determining that it does not change our conclusion that ESDs for SIB or AB present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling, FDA is proposing to ban ESDs intended for SIB or AB under section 516 of the FD&C Act, as amended.

IV. Legal Authority

Under section 516 of the FD&C Act, FDA may ban a device by regulation if we find, on the basis of all available data and information, that such a device with the relevant intended use(s) presents substantial deception or an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or change in labeling (see 21 U.S.C. 360f(a)(1) and (2), as amended by section 3306 of FDORA).

Section 3306 of FDORA expressly provides that FDA has the authority to ban a device for one or more intended uses and that FDA's authority under section 516 of the FD&C Act is not limited only to bans of a device for all of its intended uses. The legislative history reinforces that section 516 of the FD&C Act, as amended, authorizes FDA to ban a device regardless of whether or not the ban includes other devices that are technologically similar but have different intended uses (see H. Rept. 117–348 at 65). The regulatory status of a device has long depended on its intended use(s), even before the enactment of the 1976 Amendments (see id.). A product's status as a device regulated by FDA, along with its classification, premarket pathway, labeling, and other requirements all ''very much depend on its intended use'' (id. at 65–66). The amendment to section 516 of the FD&C Act makes clear that the same principle applies to FDA's banning authority, permitting FDA to ban certain intended use(s) of a type of technology that meet the standard to ban devices, while not banning others that do not (see id. at 66).

A banned device, as defined in part by its intended use(s), is adulterated under section 501(g) of the FD&C Act (21 U.S.C. 351(g)), except to the extent it is being studied pursuant to an investigational device exemption under section 520(g) of the FD&C Act (21 U.S.C. 360j(g)). The FD&C Act defines various prohibited acts respecting adulterated devices (see 21 U.S.C. 331).

This proposed rule is also issued under section 701(a) of the FD&C Act, which provides FDA authority to issue regulations for the efficient enforcement of the FD&C Act (see 21 U.S.C. 371(a)). This rule, if finalized, would enable FDA to efficiently enforce the FD&C Act.

Part 895 sets forth the regulations that apply to banning devices under section 516 of the FD&C Act. Consistent with those regulations (and other applicable legal provisions), we are proposing findings, based on all available information and data, that ESDs for SIB or AB present a substantial and unreasonable risk of illness or injury.

In determining whether a risk of illness or injury is ''substantial,'' FDA considers whether the risk posed by the continued marketing of the device, or continued marketing of the device as presently labeled, is important, material, or significant in relation to the benefit to the public health from its continued marketing (see § 895.21(a)(1) (21 CFR 895.21(a)(1))).

Although FDA's device banning regulations do not define ''unreasonable risk,'' we explained in the preamble to the final rule establishing part 895 that, with respect to ''unreasonable risk,'' we will conduct a careful analysis of risks associated with the use of the device relative to the state of the art and the potential hazard to patients and users (44 FR 29214 at 29215, May 18, 1979). The state of the art with respect to this rule is the state of current technical and scientific knowledge and medical practice with regard to the treatment of patients exhibiting self-injurious and aggressive behavior.

Thus, in determining whether a device presents an ''unreasonable and substantial risk of illness or injury'' for one or more intended uses, FDA analyzes the risks and the benefits the device poses to individuals when used for such intended use or uses, comparing those risks and benefits to the risks and benefits posed by alternative treatments being used in current medical practice. Actual proof of illness or injury is not required; FDA need only find that a device presents the requisite degree of risk on the basis of all available data and information (H. Rept. 94–853 at 19; 44 FR 29214 at 29215).

If FDA determines that the risk can be corrected through labeling, FDA will notify the responsible person of the required labeling or change in labeling necessary to eliminate or correct such risk (see 21 CFR 895.25). Because FDA is proposing to determine that the risk associated with using ESDs for SIB or AB cannot be corrected or eliminated by labeling, we are not at this time notifying responsible persons regarding labeling. If FDA finalizes this ban as proposed, ESDs intended for SIB or AB

will be adulterated and not legally marketed within the meaning of section 1006 of the FD&C Act when intended for SIB or AB.

To ban a device intended for human use, § 895.21(d) requires that a proposed ban briefly summarize:

- the Agency's findings regarding substantial deception or an unreasonable and substantial risk of illness or injury;
- the reasons why FDA initiated the proceeding;
- the evaluation of the data and information FDA obtained under provisions (other than section 516) of the FD&C Act, as well as information submitted by the device manufacturer, distributer, or importer, or any other interested party;
- the consultation with the classification panel;
- the determination that labeling, or a change in labeling, cannot correct or eliminate the deception or risk;
- the determination of whether, and the reasons why, the ban should apply to devices already in commercial distribution, sold to ultimate users, or both; and
- any other data and information that FDA believes are pertinent to the proceeding.

The previous proposed and final ban on ESDs for SIB or AB describe this information extensively, and we do not repeat that information in full here. Instead, because the primary change in circumstances leading to this rulemaking is of a legal (not scientific) nature, this proposed rule references the information and findings from the previous rulemaking and briefly summarizes that information with reference to the previous proposed rule, final rule, or both, as applicable. In addition, this proposed rule discusses the new data and information that FDA has become aware of since the 2020 Final Rule.

FDA notes that, although a banned device or banned intended use of a device is not barred from clinical study under an investigational device exemption pursuant to section 520(g) of the FD&C Act, any such study must meet all applicable requirements. These include, but are not limited to, requirements for: protection of human subjects (21 CFR part 50), financial disclosure by clinical investigators (21 CFR part 54), approval by institutional review boards (21 CFR part 56), and investigational device exemptions (21 CFR part 812).

V. Evaluation and Discussion of Data and Information

FDA has determined, on the basis of all available data and information, that ESDs for SIB or AB present a substantial and unreasonable risk of illness or injury. Given the relatively short amount of time since the previous ban that we finalized in 2020, there is very little relevant data or information that we have not already considered and discussed in the previous rulemaking. The few publications and other information that have become known to the Agency in the brief interim between the issuance of the previous ban in 2020 and now do not change our conclusions regarding the risks or effects of ESDs for SIB or AB or the state of the art of treatment for this patient population. We are therefore referencing our previous discussion and findings (81 FR 24386 at 24386 through 24412 and 85 FR 13312 at 13312 through 13349) in this rulemaking and supplementing them with an explanation of how since-developed data and information have added to our understanding of the relevant issues. We also are associating with this rulemaking the public dockets created for the previous rulemaking (Docket No. FDA–2016–N–1111) and the Neurological Devices Panel of the Medical Devices Advisory Committee on April 24, 2014 (Docket No. FDA–2014–N–0238) and consider them part of this proposed rule. All of the documents associated with Docket No. FDA–2016–N–1111 and Docket No. FDA–2014–N–0238 are contained in the docket for this proposed rule as well. With regard to the available data and information, this proposed rule therefore focuses on new information and data that we have become aware of since we issued the previous ban.

To identify and assess information that we had not previously considered, we conducted a search for literature on the risks and effects of ESDs for SIB or AB published since our systematic literature review for the 2016 Proposed Rule and again assessed the state of the art for treating SIB or AB.

Our search returned the following new sources: (1) 5 research studies (3 case reports, an open label add-on study, and a retrospective chart review); (2) 4 policy or consensus statements; a task force report; (3) 11 commentaries by researchers, academics, or practitioners; (4) a set of practice guidelines; (5) a followup survey of 88 former patients of JRC that did and did not have ESDs as part of their treatment plans; (6) and a meta-analysis. FDA weighed the new information according to the same factors that we explained in the 2016 Proposed Rule and 2020 Final Rule.

During the development of the 2020 Final Rule, in the form of comments to the docket, JRC provided the Agency with several JRC studies, information, and numerous records of patients with SIB or AB whose treatment plans include ESD use. Of the five new research studies, four are authored or coauthored by JRC staff. The four JRC research studies appear to be based largely on this same information and patient data and, as discussed in sections V.A and B, have many of the same significant limitations identified by FDA as the previously submitted studies, meaning the studies are less likely to support confidence in generalizable results than studies with more scientifically sound designs and methodologies. As a result, while the publication process adds some reassurances to the credibility of the information and data, presenting previously submitted data in a different form does little to add to overall knowledge about the risks and effects of ESDs for SIB or AB.

Generally speaking, little new information or data have developed since our previous consideration of banning ESDs for SIB or AB. Nonetheless, the new material is consistent with the evidence FDA previously considered regarding the risks presented by this device, the lack of evidence of its effectiveness for the treatment of SIB or AB, and the state of the art for treating SIB or AB, which includes successful interventions that are less restrictive and lower risk, as has been the case for decades (85 FR 13312 at 13341). Accordingly, we have again found that the devices present a substantial and unreasonable risk of illness or injury that cannot be corrected or eliminated by labeling or change in labeling.

A. Risks of ESDs for SIB or AB

The new studies and other materials that FDA reviewed are consistent with our previous findings regarding the risks of ESDs for SIB or AB, including likely underreporting of adverse events (AEs). As explained in the 2016 Proposed Rule and 2020 Final Rule, the risks presented by ESDs are both psychological (including suffering) and physical (including pain), each having a complex relationship with the electrical parameters of the shock. The subjective experience of the person receiving the shock can therefore be difficult to predict. Physical reactions roughly correlate with the peak current of the shock delivered by the ESD. However, various other factors such as sweat,

electrode placement, recent history of shocks, and body chemistry can physically affect the sensation. As a result, the intensity or pain experienced by an individual from a particular set of shock parameters can vary greatly from patient to patient and from shock to shock. More information about the relationship between the electrical parameters of the shock and conditions that may affect patient perception can be found in section I.C. of the 2016 Proposed Rule (81 FR 24386 at 24390 through 24391) and Response 14 of the 2020 Final Rule (85 FR 13312 at 13322).

Possible adverse psychological reactions are even more loosely correlated with shock strength or intensity (85 FR 13312 at 13322). To cause such adverse reactions, the shock needs to be subjectively stressful enough to cause trauma or suffering, which does not necessarily require a strong shock. Trauma becomes more likely, for example, when the recipient does not have control over the shock or has developed a fear of future shocks, neither of which is an electrical parameter of the shock. A more detailed explanation of these phenomena can be found in the 2016 Proposed Rule (81 FR 24386 at 24387) and the 2020 Final Rule (85 FR 13312 at 13324 through 13325).

To summarize, FDA found that the medical literature shows ESDs present a number of psychological harms including depression, PTSD, anxiety, fear, panic, substitution of other negative behaviors, worsening of underlying symptoms, and learned helplessness (becoming unable or unwilling to respond in any way to the ESD); and the devices present the physical risks of pain, skin burns, and tissue damage.

FDA also considered risks identified through other sources, such as experts in the field, State agencies that regulate ESD use, and records from the only facility that has recently manufactured and is currently using ESDs for SIB or AB. These sources further support the reports of risks in the literature and indicate that ESDs pose additional risks such as suicidality, chronic stress, acute stress disorder, neuropathy, withdrawal, nightmares, flashbacks of panic and rage, hypervigilance, insensitivity to fatigue or pain, changes in sleep patterns, loss of interest, difficulty concentrating, and injuries from falling (85 FR 13312 at 13315). For more information about FDA's analysis regarding the risks of ESDs for SIB and AB, see section V.C. of the 2020 Final Rule (85 FR 13312 at 13321 through 13332).

We also concluded that the medical literature likely underreports AEs. This is attributable to several factors including the small number of subjects in the studies, many of whom have impaired ability to demonstrate and communicate AEs; potential attribution by clinicians of adverse effects to the patients' cognitive, intellectual, or psychiatric conditions rather than to the device; methodological limitations such as study design and the lack of a prespecified systematic plan for monitoring AEs; and researcher bias (81 FR 24386 at 24395 through 24396; 85 FR 13312 at 13329 and 13331).

The new sources that are based largely on data and information that FDA previously reviewed when developing the 2020 Final Rule support our previous determinations for the 2020 Final Rule about the types of risks posed by ESDs for SIB or AB. As a result, these new sources do not significantly affect our previous assessment of risks. Specifically, one meta-analysis of 150 reports and studies (Ref. 2) and four commentaries (Refs. 3 to 6), including one by a JRC staff member, report AEs associated with ESDs for SIB or AB. These sources identify the following physical and psychological risks:

- pain (Refs. 2, 3, 5);
- escape or avoidance responses (Refs. 3 and 5);
- extreme anxiety manifesting as screaming, crying, negative vocalizations when ESD was implemented, and attack (Refs. 3 and 5);
- tensing of the body (Ref. 3);
- emotional behavior (Ref. 3);
- fear (Refs. 4 to 6);
- feeling terrorized (Ref. 6);
- panic (Ref. 5);
- ''freezing'' (Ref. 5);
- attempts to remove the device (Ref. 5);
- distress (Refs. 2 and 4);
- burns (Refs. 3 and 6);
- tremor in the thigh during activation (Ref. 3); and
- temporary skin discoloration (Ref. 3).

In addition, the new sources based primarily on data and information that FDA had not previously reviewed for the 2020 Final Rule generally support these risks. A task force of the Association for Behavior Analysis International (ABAI) reports pain and attempts to remove the device (Ref. 7) and two of the studies (Refs. 8 and 9) report pain, escape/avoidance, and/or temporary anxiety, as noted below. While some of these new sources suggest that there is no strong evidence of negative ''side effects'' of ESDs based on research to date (Ref. 7) or no occurrence of AEs (Ref. 8), these conclusions are based on studies that have significant limitations, as discussed below and in the previous rulemaking (81 FR 24386 at 24400 through 24401). During the previous rulemaking, some experts expressed concern about a heightened risk of AEs ''from exposing a member of a vulnerable patient population to continual, painful shocks over a period of years, in many cases several years'' (85 FR 13312 at 13327).

As discussed in section V.B., the new studies continue to demonstrate use of ESDs for lengthy, indefinite periods of time and adaptation of some patients to the shocks (they no longer respond to shocks), even at the strongest level. The use of ESDs for long periods and on patients who have adapted to shocks would provide greater opportunity for AEs to occur, or for existing AEs to get worse due to cumulative effects, in a population largely consisting of vulnerable individuals. A treatment plan that includes use of ESDs for individuals with SIB or AB indefinitely (Ref. 10) would further heighten the concern about the risks of AEs. As explained further in section V.B., a 173-patient retrospective chart review study suggests that JRC attempts ''planned fading'' of ESD use, defined in that study as the removal of all ESD devices for any period, for only a relatively few number of individuals the attending clinician believes are likely to succeed (Ref. 9).[2] Thus, most of the individuals would continue to accumulate exposure to the risks of ESDs for SIB or AB. Further, a decision to use ESDs for ''long-term management'' of SIB or AB (Ref. 10) could suppress behavior in a manner that masks an underlying medical condition (Ref. 7). This in turn can affect access to (or the desire to access) effective treatments, which itself represents a risk to health.

The new sources also add evidence for the likelihood of underreporting of AEs for the same reasons we previously found for the medical literature reviewed for the 2020 ban: the impaired ability of many subjects to demonstrate and communicate AEs, which also increases the risk of harm to these individuals; difficulty of practitioners to recognize feedback from patients indicating that an AE occurred; methodological limitations in the studies; and researcher bias. Thus, while some new sources indicate that research ''does not provide strong evidence that [ESDs are] associated with negative side effects'' and that the ''few studies presenting data on the side effects of [ESDs] have reported only

[2] According to the study, only 23 of 173 individuals were in the planned fading group.

positive collateral changes in responding,'' (Ref. 7), these conclusions need to be viewed with these limitations in mind.

Like the medical literature considered for the 2020 Final Rule, most of the new studies involve a small number of patients, some of whom likely would have difficulty communicating or otherwise demonstrating AEs, including injuries, due to cognitive, intellectual, or psychiatric conditions. As noted in the 2016 Proposed Rule (81 FR 24386 at 24395), this difficulty may prevent providers from recognizing feedback from patients indicating that an AE has occurred.

None of the new studies prospectively planned for the systematic observation and collection of data regarding AEs, and very few AEs are reported. Only one new study on the use of the GED, the only ESD still in use for SIB or AB, identified any AEs (Ref. 9). That study, a retrospective chart review of 173 patients authored by JRC staff, reports only what the authors ''anecdotally'' found were ''the most common side effects'': escape/avoidance responses and temporary anxiety during the period between occurrence of the behavior and the ''programmed consequence,'' *i.e.,* shock (Ref. 9). The study reports that staff members who administered shocks were ''prompted to report any adverse conditions,'' and acknowledges that ''a standardized *a priori* system was not employed'' for monitoring AEs (Ref. 9). Thus, the study does not report systematic, recorded counts of adverse events based on specific identification or followup protocols. Rather, it reports the authors' subjective opinion in hindsight. Three of the other new studies, two of which were authored or coauthored by JRC staff, include no assessment of AEs (Refs. 10 to 12).

The remaining new study, a case report coauthored by JRC staff, reports ''no evidence of physical or psychological adverse effects when GED is administered per protocol'' (Ref. 8). Despite that statement, the study lists temporary pain as a ''con'' of GED use. Further, the JRC coauthor of the study, who is also coauthor of three of the other new studies, continues to acknowledge that ''[t]he obvious effect of [the ESD] is pain caused when electrical current stimulates nociceptors and sensory receptors'' (Ref. 3). As explained in the 2016 Proposed Rule and 2020 Final Rule, FDA considers pain to be an AE. Such biases against recognizing and/or recording certain harms as AEs creates doubt that the studies adequately considered AEs and, therefore, the risks of the device. Such biases also would impair an accurate benefit-risk assessment; undesirable effects should not be presumed unavoidable, much less go unaccounted for, even if they ultimately prove to be reasonable. The pain ESDs cause is relevant because, although ESDs are intended to apply an aversive stimulus, the pain they cause to attempt to develop the aversion is nevertheless harmful.

All of the new studies are retrospective reviews of clinical experience, not prospective studies. While retrospective reviews can be informative, creating a plan to identify AEs in a standardized, forward-looking way and ensure a comprehensive record from the outset will generally provide much stronger support for a conclusion that a lack of reported AEs means a lack of AEs to report.

As with the earlier studies, researcher bias and author conflicts of interest also may have contributed to underreporting of AEs. As indicated in section III.D., JRC is the sole manufacturer and only facility to use ESDs for SIB or AB. Four of the five new studies that looked at ESDs for SIB or AB were authored or coauthored by current JRC staff and may have minimized AEs. As noted earlier, only one study reports any AEs experienced by patients and limits reporting only to the ''most common side effects,'' of which pain was not included (Ref. 9).

The other new sources that FDA reviewed also suggest a lack of attention to the careful and systematic assessment of AEs in research involving ESDs, and more generally, in research involving intellectually and developmentally disabled individuals (Refs. 2, 4 to 6, 8, and 13 to 17). For instance, one meta-analysis looking at reporting of AEs in research involving young autistic children notes that ''[s]tudies of effectiveness did not systematically define, monitor, or measure adverse events; instead they were reported in an ad hoc fashion and considered tangential to the studies'' (Ref. 2). Another author discussing research involving autistic individuals opines that the inadequate attention to and examination of harms amounts to ''negligent reporting'' (Ref. 13). While not all individuals with SIB or AB are autistic, this information informs our general understanding of the limitations in research involving individuals with intellectual and developmental disabilities. This information tends to show that research that, in general, involves people who have difficulties communicating and, more specifically, involves the use of ESDs for SIB or AB, often does not provide a complete picture of AEs.

Given the foregoing, FDA has not changed its determination that AEs very likely have been underreported in the literature. More information about FDA's prior conclusion that AEs likely are underreported in the literature can be found in the 2020 Final Rule at Responses to Comments 26–29 of (85 FR 13312 at 13329 through 13332).

Thus, based on the totality of the information available to FDA, our determination regarding the risks posed by ESDs for SIB or AB identified in the 2020 Final Rule has not changed.

B. Effects of ESDs for SIB or AB

The new information that FDA reviewed does not change our previous determinations regarding effectiveness of ESDs for SIB or AB. For the 2020 Final Rule, FDA determined that some individuals subject to ESDs may exhibit an immediate interruption of the targeted behavior if the shock is applied while the behavior is occurring, assuming the individual has not adapted to the shocks (85 FR 13312 at 13333). However, we also determined that the available evidence does not establish that ESDs improve the underlying causative disorder or condition an individual to achieve a durable reduction of SIB or AB for a clinically meaningful period of time (85 FR 13312 at 13333). A durable effect is one where an individual develops a conditioned response, so the target behavior, along with the frequency of shocks, is significantly reduced over a clinically meaningful period of time, either while the individual continues to wear the ESD or after the ESD is removed.

As we discussed in the 2020 Final Rule (see 85 FR 13312 at 13332), FDA found some information in the scientific literature to suggest ESDs may reduce SIB and AB in some individuals. However, as we explained, the evidence cannot be generalized and is insufficient to demonstrate effectiveness because the studies suffer from serious limitations that limit confidence in the results, including weak design, small size, confounding factors, outdated standards for conduct, and study-specific methodological limitations. As discussed in the 2016 Proposed Rule, generally a study's strength or weakness is related to design in a number of ways, particularly through randomization, control, and the number of study subjects. There have been no large, randomized, and controlled trials, or even any large or randomized trials, of

ESDs for SIB or AB.[3] Although there have been some studies with some level of controls, the controls have been inadequate for effectiveness to be demonstrated and they suffer from other significant limitations. For further discussion about the strengths and weaknesses of study designs and the limitations in the literature previously reviewed by FDA, see section II.B.2 of the 2016 Proposed Rule (81 FR 24386 at 24400 through 24401) and responses to Comment 33 of the 2020 Final Rule (85 FR 13312 at 13332 through 13333).

For instance, as discussed in the previous rulemaking, one study used a prospective case-control design. In addition to not being randomized, the study also suffers from significant methodological limitations. The study was not blinded, the sample size was extremely small, and an unvalidated surrogate endpoint (decrease in mechanical restraint rather than a direct measure of SIB) was used as the primary outcome measure (81 FR 24386 at 24400; 85 FR 13312 at 13333). The study also did not systematically assess AEs (85 FR 13312 at 13329).

FDA also reviewed a retrospective chart review during the previous rulemaking. Retrospective reviews are often considered a relatively weaker design because they do not include a control group. The study also suffers from various methodological limitations that affected the weight of the evidence (see 81 FR 24386 at 24401). The bulk of the scientific articles reviewed during the prior rulemaking suggesting effectiveness of ESDs for SIB and AB were case reports or series. Case reports or series are even weaker than retrospective chart reviews because they report on, and attempt to explain, the experiences of very few, or even single, individuals (81 FR 24386 at 24400). Further, designs that take an outcome as given and then work backwards in an attempt to explain it are more vulnerable to bias than prospective designs.

As explained in the 2016 Proposed Rule, conclusions drawn from study designs that are not randomized or controlled are generally considered weaker because they do not rule out other causes for any differences in results, including selection bias, as effectively as other study designs. Many factors contribute to the manifestation or reduction of target behaviors and therefore can be significantly confounding (81 FR 24386 at 24400). It is difficult to draw conclusions regarding the effectiveness of ESDs from a study that does not control for such confounding factors. Studies that do not plan for the systematic observation and collection of data about AEs also may overemphasize benefits, unduly implying greater safety and reasonableness of the risks because such a study would not fully account for the risks. Such studies will yield weaker conclusions with respect to the benefit-risk profile. As noted in the 2016 Proposed Rule, in the case of ESDs used for SIB or AB, randomization, control, large numbers of subjects, and AE reporting are critical to understanding the benefit-risk profile (81 FR 24386 at 24400).

The Agency also has had concerns regarding the fact that some of the authors of such studies and a member of one publication's editorial board were affiliated with JRC, which suggests potential researcher bias and conflicts of interest (81 FR 24386 at 24401). For more information on the limitations identified by FDA in the medical literature FDA considered for the 2020 Final Rule, see the 2016 Proposed Rule (81 FR 24386 at 24400 and 24401) and Responses 31 and 33 in the 2020 Final Rule (85 FR 13312 at 13332 and 13333).

As explained in the 2020 Final Rule, the ability to achieve durable effects by aversively conditioning behavior is critical to the evaluation of the effectiveness of ESDs for SIB or AB (see 85 FR 13312 at 13333). In its comments in the previous rulemaking, JRC relied on its fading of some individuals off ESDs to support its arguments regarding the device's ability to condition an individual to achieve a durable reduction in SIB and AB. The gradual reduction in the use of the device is part of ''fading,'' which would presumably be implemented once the individual has associated the target behaviors with the noxious stimulus. However, both the previously reviewed and new evidence indicate that only a small percentage of individuals at JRC (the only facility that applies the devices for SIB or AB) have been completely faded off the ESD—and that the device has been used on some individuals for years and even decades (see 85 FR 13312 at 13335 and 13336; Refs. 7 to 9). While one study suggests that there also are a number of patients who have tolerated some degree of fading with continued availability of the ESD (estimated at 20 percent ranging from hours to months) (Ref. 8), the study acknowledges that the percentage is only an estimate and suffers from a number of the limitations discussed above.

Among the new studies, the 173-patient retrospective review indicates that JRC views fading, defined in that study as the removal of all ESD devices for any period, as likely to succeed in only a small number of individuals. JRC selects for ''planned fading'' only a small percentage of individuals whom JRC assesses to have likely demonstrated low rates of problem behaviors over extended periods of time, higher rates of alternative behaviors, and the acquisition of new skills (23 of 173 patients in the study) (Ref. 9). Also, as has been observed in the literature, once the ESD is removed, SIB and AB can exceed pre-baseline levels (85 FR 13312 at 13335). This evidence undermines the claim that ESDs are effective for durable behavior conditioning for SIB or AB. Further, JRC provided no information regarding clinical protocols, treatment plans, or behavior frequencies for individuals after they stopped use and left JRC. As explained in the 2020 Final Rule, such data are important in order to understand, for example, whether behaviors worsened or improved after discontinuation of ESD use and whether ESDs or other, non-aversive, treatments are responsible for any successes (85 FR 13312 at 13336).

In the previous rulemaking, FDA also discussed evidence indicating that some individuals can experience adaptation to ESD shocks after being shocked for some period of time. This means that, to the extent a patient may have been responding to ESD shocks, the patient no longer responds, at least at the level of shock strength that has been used on them. For these individuals, even immediate interruption of behavior may not result from use of shocks. Experts in the field consider adaptation to be evidence of ineffectiveness (see 85 FR 13312 at 13336 and 81 FR 24386 at 24399). JRC has acknowledged that adaptation may necessitate an alternative method to modify behaviors instead of an ESD (see 85 FR 13312 at 13336). As we stated in the 2020 Final Rule, JRC's Director of Research at the time said JRC had ''a very comprehensive alternative behavior program'' that was ''very effective'' after adaptation to the stronger version of JRC's ESD, even for patients engaging in SIB that could result in serious injury to themselves (85 FR 13312 at 13336). That JRC's own providers ultimately turn to alternative behavioral programs, even for severe behaviors, speaks both to the effectiveness of state-of-the-art approaches and the ineffectiveness of applying electrical shocks for SIB or AB.

[3] A randomized controlled trial is prospective; the researcher creates different conditions across groups at the outset and will observe outcomes in the future. The researcher will eventually compare the outcomes across groups, with the control group providing confidence that the researcher-set conditions were responsible for any differences.

Considering such evidence in the previous rulemaking, FDA concluded that the limited data regarding the effects of ESDs for SIB or AB are inadequate to demonstrate that ESDs are effective for durable behavior conditioning. For more information about FDA's previous determination regarding the effects of ESDs on SIB and AB, see section V.D. of the 2020 Final Rule (85 FR 13312 at 13332 through 13337).

The information in the new sources does not change the Agency's prior determinations about the short- and long-term effects of ESDs on SIB or AB. Most of the new studies are authored or coauthored by JRC staff and appear to be based on much of the same or similar data JRC previously submitted, with similar limitations, albeit presented in a different format. As with the studies FDA reviewed for the 2020 Final Rule, the new studies similarly suggest some immediate effects of ESDs for SIB or AB for some individuals, in particular that the ESDs interrupted the target behavior (Refs. 8 to 12). Some commentaries, consensus statements, the ABAI task force report, and the 88-patient survey also offer some support for the immediate effect of ESDs on targeted behavior (although some individuals may not respond and/or may adapt to the shock intensity and alternative approaches are used) (Refs. 3, 5, 7, 14, 18, and 19). The new studies also conclude that ESDs have some level of durable effectiveness for some individuals with SIB and AB. Relying on information that FDA previously reviewed and some of the new studies discussed in this proposed rule, the ABAI task force similarly states that ESDs ''can be effective in suppressing problem behavior for up to 5 years'' and that ''responding typically remains suppressed under [ESDs] over the long run'' (Ref. 7). However, due to the various limitations of these studies as well as the evidence indicating adaptation to the device and potentially unending ESD use for some individuals, FDA has determined that the evidence still does not demonstrate that the devices are effective for durable behavior conditioning for SIB or AB for a clinically meaningful period of time, much less that they present a favorable benefit-risk profile.

The new studies suffer from many of the same limitations as those studies FDA considered and discussed in the 2016 Proposed Rule and 2020 Final Rule. The three case report studies (Refs. 8, 11, and 12) and one open label add-on trial (Ref. 10) involve a very small number of patients (one to four), which makes generalization of any results difficult. Four of the five new studies were authored or coauthored by JRC staff, which may introduce researcher bias. All of the studies lack robust experimental controls and, as explained above, likely underreport AEs.

The new studies also include significant confounding factors, such as the presence of concurrent treatments or changes in other treatments over a period of time. The JRC 173-patient retrospective chart review acknowledges that, ''[d]uring treatment, a given participant may have received additional treatments including psychotherapy, psychopharmacology, and/or various behavioral interventions.'' The ABAI task force report describes one example of an additional treatment, a ''holster program,'' used by JRC in some cases where a patient adapts or does not respond to the GED–4 to decrease problem behavior (see also Ref. 8). Individuals in the program receive continuous access to a positive reward (preferred videos, music, etc.) for keeping their hands in a holster for increasing amounts of time. If they remove their hands, the reward will stop, and a shock will be administered. Once the individuals can keep their hands in the holsters for 10 minutes, they continue to receive regular ''practice sessions'' to ''maintain the effectiveness of holster-wearing to decrease problem behavior throughout the remainder of the day.'' While wearing the holster during the day, if a target behavior occurs, the individual receives a shock and a 10-minute holster session (Ref. 7). The description of the holster program, while unclear in some particulars, suggests that increasing opportunities for positive reinforcement supports any reduction of target behaviors. The use of this positive reinforcement method introduces a confounding factor in the determination of the effectiveness of ESDs; the reward system, rather than the ESD, may have induced or helped induce any desirable effects on behavior. Alternatively, or perhaps as a complement to the reward system, use of the holster may have controlled or helped control the behavior. Other concurrent treatments or changes to treatments may have similar confounding effects.

Another limitation of some of the new studies stems from the fact that the behaviors targeted for ESD use are not consistent across the studies, and they were not limited to SIB or AB. Target behaviors spanned a wide range, such as ''members of a chain of behaviors (*e.g.,* posturing and threats) that consistently led to the ultimate behavior, attempts to engage in the behavior, and vestigial versions of the behavior'' (Ref. 9). Thus, vaguely described improvements that may, for example, include reductions in ''vestigial versions of the behavior'' are not obviously evidence of effectiveness for treating SIB or AB. Such claims also speak to a vulnerable population being subject to invasive behavioral control techniques; that is, such claims may also speak to an increased risk of AEs from an overly broad set of targeted behaviors. The sources also indicate that ESDs may be used for other categories of behavior such as noncompliant, destructive, and major disruptive behaviors as well as attempts to remove the device (Refs. 7, 9, and 11). Delivering an electric shock, for instance, for disruptive behavior is not clearly addressing self-injury or aggression. In the same vein, use of the device in an attempt to prevent its removal is not only difficult to rely on as evidence of effectiveness for SIB or AB, but such use also underscores that vulnerable patients are unable to avoid the risks presented by the device, such as pain. This in turn can increase other risks, such as the risk of learned helplessness (Ref. 20). Such broad target behaviors also suggest that a population broader than individuals exhibiting SIB and AB may be subject to the invasive behavioral control of ESDs and the risks they present.

Some studies acknowledge these methodological limitations. The JRC 173-patient retrospective chart review (Ref. 9) explains that ''a wide range of behavior topographies [were] targeted'' because they ''were associated with aggression and self-injury,'' and the ''participants lacked homogeneity outside of the uniting factor of behavior problem severity and refractory nature.'' In other words, the study included participants with widely differing behavioral characteristics, although their severity was considered similar. The study also recognizes, ''[t]he participants carried a variety of diagnoses and may have responded differently because of their diagnostic classification'' and ''[v]arious pathophysiological and environmental determinants may lead to such behaviors.'' This study also noted, ''the frequency data lacks interobserver reliability,'' meaning it did not account for or address variability between different observers' subjective judgments. The open label add-on trial (Ref. 10) identifies some of the same limitations that make it difficult to conclude that any observed reductions in target behavior are evidence of effectiveness of ESDs for SIB or AB.

New evidence regarding the lengthy, often indefinite, time periods that ESDs have been used on individuals and the adaptation of some individuals to the shocks further supports our determination that ESDs have not been demonstrated to be effective. For example, a four-patient case report study suggests that, for some patients, ESDs would be indicated indefinitely, similar to insulin for diabetes or antiarrhythmic and antihypertensive drugs for cardiovascular disease (Ref. 8). The ABAI task force reports that JRC's approach is that ''most clients will need to receive treatment [with ESDs] for lengthy periods of time (5 to 20 years)'' and that ''this does not appear to be a treatment that can be effectively faded or discontinued quickly'' (Ref. 7). This suggests that the device is not effective for durable behavior conditioning for SIB or AB, and is, therefore, not effective for its intended use.

The new sources also support FDA's previous finding that ESDs may even lose any immediate effect for some individuals exhibiting SIB or AB. The 173-patient retrospective chart review from JRC reports that for some participants the ''GED lost efficacy or was only partially effective and was substituted for [sic] a more intense stimulus (GED–4)'' (Ref. 9). The authors note that adaptation was consistent with earlier studies that identified habituation to shock intensity by some patients and the need for more-intense shocks to eliminate targeted behavior. The JRC four patient case report study noted this effect in one patient (Ref. 8). The ABAI task force also reported adaptation to the ESD based on a visit by members spanning 2 full days in July 2022 to assess JRC's use of ESDs. The report states that ''[i]n some cases, the intensity of the shock must be increased to improve and/or maintain its efficacy'' and ''a [JRC] client will be moved from the GED–3 to the GED–4 if the GED–3 does not reduce the behavior sufficiently or if the client's behavior begins to show habituation to the GED–3'' (Ref. 7). According to the report, patients can even habituate, or may not respond to, shocks from the GED–4, which provides shocks that are significantly stronger than those provided by the GED–3 (41 milliampere (mA) vs. 15 mA).

As a result of such weaknesses and limitations, the available data, including the data and information in the new studies and other materials, are not sufficient to demonstrate that ESDs for SIB or AB are effective for durable behavior conditioning or that they have a favorable benefit-risk profile.

Based upon all available information and data, FDA continues to find that while ESDs may result in the interruption and immediate cessation of SIB and AB for some individuals if the individual has not adapted to the shocks, ESDs have not been demonstrated to be effective at improving the underlying condition or conditioning an individual to achieve a durable reduction of SIB or AB for a clinically meaningful period of time. The evidence does not establish a favorable benefit-risk profile, and the newer evidence suggesting indefinite use of the devices for ongoing management of symptoms may indicate a worse benefit-risk profile.

C. State of the Art for Treating SIB or AB

In determining whether a device presents an unreasonable and substantial risk of illness or injury, FDA analyzes the risks and benefits that the device poses to individuals relative to the state-of-the-art of treatment for the intended population—that is, the current state of technical and scientific knowledge and medical practice, and the potential hazard to patients and users. As explained in the 2020 Final Rule, FDA found that scientific and medical advances, concerns for ethical treatment, and a desire to create generalizable interventions that work in community settings led behavioral scientists to develop treatments for SIB and AB that are low risk and have generally been successful. The available information indicated that state-of-the-art treatments of SIB or AB are multielement positive interventions (*e.g.,* paradigms such as PBS or DBT), sometimes in conjunction with pharmacological treatments, as appropriate (85 FR 13312 at 13341; 81 FR 24386 at 24410). When restrictive elements or punishment techniques were used, they supplemented other behavioral intervention elements, were much less intrusive, and were not painful; they were considered both compatible with PBS and beneficial (see 85 FR 13312 at 13341).

As we said in the 2020 Final Rule, the use of ESDs does not teach a person new skills or replacement behaviors, does not mitigate the underlying cause of their SIB or AB, and has not been demonstrated to be effective for behavioral conditioning, which is especially difficult to achieve for those who have conditions that impair their ability to understand consequences and react by changing their behaviors. These are some of the reasons that the field of applied behavior analysis (ABA) as a whole moved away from highly intrusive physical aversive conditioning techniques such as ESDs decades ago (85 FR 13312 at 13340).

FDA determined that although positive behavioral interventions may not always be completely successful in all patients, positive-only approaches have low risk and are typically successful, on their own or in conjunction with pharmacotherapy, regardless of the severity of the behavior targeted or the setting, and can achieve durable long-term results while avoiding the risks posed by ESDs (85 FR 13312 at 13315). As noted above, when practitioners felt punishment techniques were helpful, such techniques were much less intrusive than the use of ESDs; for example, they included timeouts, holds, and facial screening (85 FR 13312 at 13341). For a detailed description of FDA's assessment of state-of-the-art treatments for SIB and AB for the 2020 Final Rule, see section V.E. of the 2020 Final Rule (85 FR 13312 at 13337 through 13344) and section II.C. of the 2016 Proposed Rule (81 FR 24386 at 24403 through 24410).

The evidence still indicates that positive-only approaches, such as approaches based on differential reinforcement and skill-based instruction, have been shown to be highly successful in treating many types of severe problem behaviors (Ref. 7). Even when ESDs are used for SIB or AB, they generally are supplemented by state-of-the-art and/or other less intrusive approaches even for severe cases (Ref. 9). An example of an alternative treatment that practitioners may turn to if an individual habituates to the strongest ESD available is the holster program, which is a less intrusive paradigm that increases the use of positive rewards. In short, to the extent new information and data bear on the state of the art, they underscore why the field as a whole has, for decades (81 FR 24386 at 24387), moved away from ESDs and turned toward less intrusive techniques to treat SIB or AB effectively (Ref. 21). Further, the newer information and data emphasize that ESDs are not in fact treatments of last resort, even at the facility that has previously made such claims. As discussed further in section V.C., the ABAI task force reports that JRC rarely conducts analogue functional analyses (FAs), despite the fact that experts consider FA the ''gold standard'' assessment strategy for problem behavior (Ref. 7). This practice suggests that individuals may not experience the ''almost unlimited'' range of alternative treatments available (Ref. 7) based on an up-to-date, location-specific, comprehensive FA prior to JRC

incorporating ESDs into their treatment plan. This failure to systematically identify and exhaustively implement alternatives undercuts the certainty that JRC's patients would not respond to less intrusive treatment, are uniquely refractory, and that the devices are applied as a last resort, as is suggested by the device labeling.[4]

Thus, FDA concludes that state-of-the-art treatment for SIB and AB involves positive behavioral techniques, with or without pharmacotherapy, and that positive-only approaches have low risk and are generally successful even for challenging SIB and AB, in both clinical and community settings. Moreover, when punishment techniques are used in state-of-the-art behavior modification plans, they are not painful and are much less intrusive.

D. Labeling and Correcting or Eliminating Substantial and Unreasonable Risks

After considering all available data and information for the 2020 Final Rule, FDA determined that labeling or a change in labeling cannot correct or eliminate the unreasonable and substantial risk of illness or injury of ESDs for SIB or AB (85 FR 13312 at 13344 and 13345). FDA further determined that labeling cannot limit the risks to only the most refractory patients. The only ESDs for SIB or AB that are currently in use, two models of GED manufactured and used by JRC, are labeled for use only in individuals refractory to other treatments. Such a subpopulation is difficult or impossible to define (85 FR 13312 at 13332). Further, FDA found the available evidence casts doubt on whether the devices are in fact applied as a last resort after attempting all other approaches as indicated in the labeling (and as claimed by one commenter on the previous proposed rule (JRC)) (Ref. 22). These determinations remain true after FDA's updated review of the available literature.

More importantly, no subpopulation has been identified in which ESDs are effective for SIB or AB or do not pose the risks identified in the previous rulemaking and discussed earlier in this document. There are also no data suggesting ESDs are more likely to be effective for SIB or AB or less likely to pose these risks in a subpopulation that is refractory to other treatments or in any other subpopulation. Regardless of how the device is labeled, the individual subject to it will receive shocks intended to be painful and thereby be subject to the physical and psychological risks described in section V.A above, without demonstrated effectiveness (see also 85 FR 13312 at 13344).

Further, individuals with intellectual or developmental disabilities may not communicate or be able to communicate information for the device user to change the manner in which the device is used to correct or eliminate the risks (81 FR 24386 at 24412; 85 FR 13312 at 13344). Impaired communication of the effects of the device further prevents labeling from reducing risks. Accordingly, we concluded that no manner of labeling will correct or eliminate the substantial and unreasonable risks of these devices (see 81 FR 24386 at 24411 and 24412; 85 FR 13312 at 13344).

No additional information has come to FDA's attention indicating that labeling or a change in labeling can correct or eliminate the substantial and unreasonable risks of these devices. As noted in section V.C., the new evidence indicates that JRC rarely conducts FAs of patients. This absence of FAs conducted by JRC suggests that the existing limiting language in the labeling has little effect on mitigating risks by focusing on refractory cases. Indeed, as discussed more in section V.B. above, refractory cases at JRC are ultimately treated with less invasive approaches suggesting that as used, ESDs are not a treatment of last resort. This reinforces our prior determinations that labeling specifying a refractory population would not correct or eliminate the substantial and unreasonable risk, and that there are no labeling changes that would mitigate the risks posed by these ESDs.

Finally, as explained above and in the 2020 Final Rule, no manner of labeling will correct or eliminate the risks for patients receiving shocks, many of whom may not communicate or be able to communicate information about AEs as a result of intellectual or developmental disabilities (85 FR 13312 at 13344). The device will continue to present the same unreasonable and substantial risk of illness or injury for these individuals regardless of the labeling. Based on this information and data, FDA concludes that labeling, or a change in labeling, cannot correct or eliminate the unreasonable and substantial risk of illness or injury of ESDs for SIB or AB.

VI. Description of the Proposed Rule

We are proposing to amend part 895 by adding § 895.105 to ban ESDs for SIB or AB. The proposed rule would ban ESDs intended to treat patients with SIB or AB and would cause ESDs intended for these uses not to be legally marketed devices, for example, under section 1006 of the FD&C Act. We are also proposing conforming edits to § 882.5235 to exclude ESDs for SIB or AB from the class II designation for aversive conditioning devices and instead to indicate that ESDs for SIB or AB are banned devices.

A. Applicability (Proposed § 895.105)

FDA is proposing to ban ESDs that apply a noxious electrical stimulus to a person's skin to reduce or stop aggressive or self-injurious behavior. FDA has determined that these devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling. FDA is not proposing to ban ESDs intended for other purposes, such as smoking cessation. ESDs are not used in electroconvulsive therapy, sometimes called electroshock therapy or ECT, which is unrelated to this rulemaking.

1. Distinguishing Technologically Similar Devices With Different Intended Uses

Note that, although ESDs for SIB or AB may have parallels in technology and behavior modification strategy as ESDs for other intended uses, ESDs for SIB or AB are distinguishable from other ESDs based on several factors. These factors include device design; whether patients have control over the shocks and what level of control they have; the power output and resulting intensity of the electric shock; and how the electric shock affects the patient, target behavior, and underlying conditions. For example, a smoking cessation device would generally have different output characteristics, resulting in a less noxious (perhaps non-painful) shock, where the person affected by the shock retains complete control of application of shocks (or could immediately revoke consent to the application of shocks). Use of such a device without modification for SIB or AB would not be expected to induce a response for SIB or AB.

In contrast, patients exhibiting SIB or AB have no control over devices intended for these uses and these devices often deliver a painful or very painful shock, strong enough to induce fear and other reactions, as opposed to a milder shock from other ESDs. The SIB or AB patient is made to carry a stimulus generation module in a waist-pack or backpack 24 hours a day, 7 days a week, except during attempts to ''fade'' the device (although the user,

[4] The labeling of GED devices includes the statement that ''[t]he device should be used only on patients where alternate forms of therapy have been attempted and failed'' (81 FR 24386 at 24412).

not the patient, still decides whether to apply and trigger the device). Depending on the targeted behavior, ESDs for SIB or AB use up to five electrodes strapped to the arms, legs, torso, and/or feet simultaneously, but the locations are not of the patient's choosing (see Ref. 7). Shocks are from one electrode at a time, and the electrodes are rotated every hour or after discharge, but the patients are not able to dictate the rotation for themselves (see Ref. 7). Patients subject to ESDs for SIB or AB also have no control over whether to withdraw from treatment. Even for patients with mild to no intellectual disabilities, evidence indicates that assent from the patient is not sought (see Ref. 7). As explained in the 2020 Final Rule, lack of control over multiple shocks is an additional risk factor because learned helplessness may be more likely when the recipient does not have control over the shocks and has previously received multiple shocks (85 FR 13312 at 13326). When the recipient does not have control over the shocks and has previously received multiple such shocks, psychological trauma such as an anxiety or panic reaction can result even when the strength is relatively modest (see 85 FR 13312 at 13324 through 13327).

Moreover, as explained in the 2020 Final Rule, devices with similar technology intended for other uses address different conditions or behaviors in different patient populations, and as a result, they present different benefit-risk profiles. A device that presents certain risks or benefits for one population may not present the same risks or benefits, or present them to the same degree, or may present different risks or benefits, for a different population. An important consideration in the benefit-risk profile of a device is the intended patient population and their vulnerabilities. The intended use population for ESDs for SIB or AB includes a significant number of individuals who have disabilities that present vulnerabilities, such as difficulty communicating pain and other harms caused by ESDs. As a result of these vulnerabilities, the individual may not communicate or be able to communicate information for the device user to change the manner in which the device is used to correct or eliminate the risks (85 FR 13312 at 13344). In addition, people who exhibit SIB or AB may not be able to associate cause and effect or, as with some people with an autism spectrum disorder (ASD), they may express pain atypically or not at all (85 FR 13312 at 13317). These vulnerabilities are not likely to be present in people who use ESDs for other purposes. As a result, individuals subject to shocks from an ESD for SIB or AB would bear a higher risk of injury or illness from the shock than, for example, smokers who choose to use an ESD to help quit smoking (81 FR 24386 at 24395). Smokers can immediately communicate pain to the device's controller or remove the device themselves. They can communicate symptoms of other harms that may be caused by ESDs to their healthcare provider, which may lead to discontinuation of the device's use, or they can decide to stop using the device (85 FR 13312 at 13317).

2. Banning ESDs for SIB or AB That Are Already in Commercial Distribution

FDA is proposing that the ban apply to devices already in commercial distribution and use, as well as devices sold or commercially distributed in the future (see § 895.21(d)(7)). This means ESDs for SIB or AB currently in use on individuals would be subject to the ban and thus, upon the effective date of the final rule, adulterated under section 501(g) of the FD&C Act and subject to potential FDA enforcement action. FDA is proposing this because the risk of illness or injury to individuals on whom these devices are already used is just as unreasonable and substantial as it is for future individuals on whom these devices could be used. Indeed, as the development of more beneficial, lower-risk alternative treatments continues, the ban's mitigation of the substantial and unreasonable risk may be greatest for the individuals on whom ESDs are currently used.

However, as explained in the 2020 Final Rule, for devices already in use for SIB or AB, in light of concerns about thorough assessments of the behaviors' functions and corresponding development of appropriate treatment plans, FDA recognizes that affected parties may need some period of time to establish or adjust treatment plans (85 FR 13312 at 13349). FDA believes that transition off ESDs should occur under the supervision of a physician and that the transition should occur as soon as possible for the individual. FDA is proposing, for devices in use on specific individuals as of the date of publication of any final rule based on this proposal, and subject to a physician-directed transition plan, compliance would be required 180 days after the date of publication of any final rule. We welcome comment on how long transitions may take.

B. Proposed Conforming Amendment (§ 882.5235)

We are proposing conforming edits to paragraph (b) of § 882.5235 to exclude ESDs for SIB or AB from the classification of aversive conditioning devices into class II. This amendment would indicate that ESDs for SIB or AB are banned devices rather than class II devices.

VII. Proposed Effective and Compliance Dates

FDA proposes that any final rule based on this proposed rule be effective 30 days after its date of publication in the **Federal Register**.

FDA proposes that, for devices in use on specific individuals as of the date of publication of the final rule and subject to a physician-directed transition plan, compliance be required 180 days after the date of publication of the final rule in the **Federal Register**. For all other devices, FDA proposes that compliance be required 30 days after publication in the **Federal Register**.

VIII. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.'' OIRA has determined that this proposed rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1).

The Regulatory Flexibility Act requires us to analyze regulatory options

that would minimize any significant impact of a rule on small entities. Because the proposed rule would only affect one entity—one that is not classified as small—we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The 2022 threshold after adjustment for inflation is $177 million, using the 2022 Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Benefits, Costs, and Transfers

The proposed rule, if finalized, would ban ESDs used for self-injurious or aggressive behavior. FDA has determined that these devices present an unreasonable and substantial risk of illness or injury that cannot be corrected or eliminated by labeling or a change in labeling. The proposed rule would apply to devices already in distribution and use, as well as to future sales and commercial distribution of these devices. The costs associated with this proposed rule include costs of individuals who are subject to the device if they move to another facility or another program within the affected entities. Affected entities, who use the device on such individuals, would also incur costs from reading and understanding the rule. The present value of total estimated costs range between $0.00 million and $68.93 million at a 7 percent discount rate, with a primary estimate of $34.47 million. At a 3 percent discount rate, the present value of costs range between $0.00 million and $80.59 million, with a primary estimate of $40.3 million. We estimate that the annualized costs over 10 years would range from $0.00 million to $9.17 million with a primary estimate of $4.59 million at a 7 percent discount rate and a 3 percent discount rate.

The benefits would include avoided negative physical and psychological effects from using ESDs on individuals and benefits to society in terms of protecting vulnerable populations, which we are not able to quantify. We estimate that between 51 to 54 individuals would be affected by the proposed rule, if finalized, and benefit from avoided adverse effects associated with using ESDs. Any transfers associated with the rule would occur if individuals enroll at facilities other than the affected entities. The present value of total transfer ranges between $0.00 million and $118.26 million at a 7 percent discount rate, with a primary estimate of $59.13 million. At a 3 percent discount rate, the present value of transfers ranges between $0.00 million and $138.26 million, with a primary estimate of $69.13 million. The annualized value of transfers range between $0.00 million and $15.74 million, with a primary estimate of $7.87 million, at both 7 percent and 3 percent discount rates. We provide a summary of the benefits, costs, and transfers of the proposed rule, if finalized, in table 1. We request comment on our estimates of benefits, costs, and transfers of this proposed rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

[Millions of 2022 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollar	Discount rate	Period covered	
Benefits:							
Annualized Monetized ($m/year)	.....	.....	.....	.....	7% 3%		
Annualized Quantified	.....	.....	.....	.....	7% 3%		
Qualitative	Reduction in injuries or adverse psychological effects of ESDs on individuals subject to the device.						
Costs:							
Annualized Monetized ($m/year)	$4.59 $4.59	$0.00 $0.00	$9.17 $9.17	2022 2022	7% 3%	10 years 10 years.	
Annualized Quantified	.....	.....	.....	.....	7% 3%		
Qualitative	Transition costs to affected entities and individuals for transitioning to alternative treatments.						
Transfers:							
Federal Annualized Monetized ($m/year)	.....	.....	.....	.....	7% 3%		
Other Annualized Monetized ($m/year)	$7.87 $7.87	$0.00 $0.00	$15.74 $15.74	2022 2022	7% 3%	10 years 10 years.	
	From: Affected entities that currently use the device			*To:* Other facilities that treat aggressive or self-injurious behavior			
Effects:	*State, Local, or Tribal Government:* State expenditures may rise or fall if individuals move across state boundaries						
	Small Business: No effect						
	Wages: No effect *Growth:* No effect						

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 23) and at *https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria.*

IX. Analysis of Environmental Impact

FDA has carefully considered the potential environmental effects of this proposed rule and of possible alternative actions. In doing so, the Agency focused on the environmental impacts of its action as a result of disposal of unused ESDs that will need to be handled after the effective date of the final rule.

The environmental assessment (EA) considered each of the alternatives in terms of the need to provide maximum reasonable protection of human health without resulting in a significant impact on the environment. The EA considered environmental impacts related to landfill and incineration of solid waste at municipal solid waste (MSW) facilities. The proposed action will result in an initial batch disposal of used and unused ESDs primarily at a single geographic and affiliated locations followed by a gradual, intermittent disposal of a small number of remaining devices in this and other affected communities where these devices are used. The total number of devices to be disposed is small, *i.e.,* approximately less than 300 units. Overall, given the limited number of ESDs in commerce, the proposed action is expected to have no significant impact on MSW and landfill facilities and the environment in affected communities.

The Agency has concluded that the proposed rule will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact (FONSI) and the evidence supporting that finding, contained in an EA prepared under 21 CFR 25.40, may be seen in the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA invites comments and submission of data concerning the EA and FONSI.

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different from or in addition to'' certain Federal requirements applicable to devices (see section 521 of the FD&C Act (21 U.S.C. 360k); *Medtronic* v. *Lohr,* 518 U.S. 470 (1996); and *Riegel* v. *Medtronic,* 128 S. Ct. 999 (2008)). If this proposed rule is made final, it would create a Federal requirement under section 521 of the FD&C Act that bans ESDs for SIB or AB.

XII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XIII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

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List of Subjects

21 CFR Part 882

Medical devices.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR parts 882 and 895 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. In § 882.5235, revise paragraph (b) to read as follows:

§ 882.5235 Aversive conditioning device.

* * * * *

(b) *Classification.* Class II (special controls), except for electrical stimulation devices for self-injurious or aggressive behavior. Electrical stimulation devices for self-injurious or aggressive behavior are banned. See § 895.105 of this chapter.

PART 895—BANNED DEVICES

■ 3. The authority citation for part 895 continues to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

■ 4. Add § 895.105 to subpart B to read as follows:

§ 895.105 Electrical stimulation devices for self-injurious or aggressive behavior.

Electrical stimulation devices for self-injurious or aggressive behavior are aversive conditioning devices that apply a noxious electrical stimulus to a person's skin to reduce or cease self-injurious or aggressive behavior.

Dated: March 12, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–06037 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2022–0034]

RIN 0651–AD65

Setting and Adjusting Trademark Fees During Fiscal Year 2025

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO) proposes to set and adjust trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The proposed fee adjustments will provide the USPTO sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on assumptions and estimates found in the agency's Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

DATES: The USPTO solicits comments from the public on this proposed rule. Written comments must be received on or before May 28, 2024 to ensure consideration.

ADDRESSES: Written comments on proposed trademark fees must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.*

To submit comments via the portal, commenters should go to *https://www.regulations.gov/docket/PTO-T-2022-0034* or enter docket number PTO–T–2022–0034 on the homepage and select the ''Search'' button. The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this notice and select the ''Comment'' button, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe portable document format (PDF) 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 in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic

submission of comments is not possible, please contact the USPTO using the contact information below in the **FOR FURTHER INFORMATION CONTACT** section of this notice for special instructions.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director, Office of Planning and Budget, at 571–272–8966, or *Brendan.Hourigan@uspto.gov;* or C. Brett Lockard, Director, Forecasting and Analysis Division, at 571–272–0928. *Christopher.Lockard@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Introduction

The USPTO publishes this notice of proposed rulemaking (NPRM or proposed rule) under section 10 of the AIA (section 10), Public Law 112–29, 125 Stat. 284, as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158, which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act of 1946 (the Trademark Act), 15 U.S.C. 1051 *et seq.,* as amended, for any services performed or materials furnished by the agency. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Trademark Public Advisory Committee (TPAC) and congressional oversight. TPAC held a public hearing on the USPTO's preliminary trademark fee proposals on June 5, 2023, and issued a report (TPAC Report) on August 14, 2023, containing its comments, advice, and recommendations on the preliminary fee proposals. The USPTO considered and analyzed the TPAC Report before publishing the fee proposals in this NPRM. See Part IV: Rulemaking Goals and Strategies for further discussion of the TPAC Report.

B. Purpose of This Action

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. trademark system, including implementing the Strategic Plan, available on the agency website at *https://www.uspto.gov/StrategicPlan.* The individual fee proposals align with the USPTO's fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies; (2) align fees with the full cost of trademark services; (3) set fees to facilitate the effective administration of the trademark system; and (4) offer application processing options. The proposed fee adjustments will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness by delivering high-quality and timely trademark examination and review proceedings that produce accurate and reliable trademark rights for domestic and international stakeholders.

C. Summary of Provisions Impacted by This Action

The USPTO proposes to set and adjust 31 trademark fees, including the introduction of 12 new fees. The agency also proposes discontinuing 6 fees.

Under the proposed fee schedule in this NPRM, the routine fees to obtain and maintain a trademark registration (*e.g.,* application filing, intent-to-use/use (ITU) filings, and post-registration maintenance fees) will increase relative to the current fee schedule, in order to ensure financial sustainability and provide for improvements needed relative to trademark filings and registration. Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the Table of Trademark Fees—Current, Proposed, and Unit Cost (Table of Trademark Fees), available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The AIA was enacted on September 16, 2011. See Public Law 112–29, 125 Stat. 284, 316–17. Section 10(a) of the AIA authorizes the Director of the USPTO (Director) to set or adjust by rule any fee established, authorized, or charged under the Trademark Act for any services performed or materials furnished by the agency. Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the **Federal Register** and the USPTO's Official Gazette at least 45 days before the final fees become effective.

B. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018

The SUCCESS Act was enacted on October 31, 2018. See Public Law 115–273, 132 Stat. 4158. Section 4 of the SUCCESS Act amended section 10(i)(2) of the AIA by striking ''7-year'' and inserting ''15-year'' in reference to the expiration of fee setting authority. Therefore, updated section 10(i) terminates the Director's authority to set or adjust any fee under section 10 upon the expiration of the 15-year period that began on September 16, 2011, and ends on September 16, 2026.

C. Trademark Public Advisory Committee Role

The Secretary of Commerce established TPAC under the American Inventors Protection Act of 1999. TPAC advises the Director of the USPTO on the management, policies, goals, performance, budget, and user fees of trademark operations.

When adopting fees under section 10 of the AIA, the Director must provide the proposed fees to TPAC at least 45 days prior to publishing the proposed fees in the **Federal Register**. TPAC then has 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing on the proposed fees. Then, TPAC must publish a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or recommendations received from TPAC before setting or adjusting fees.

Accordingly, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf.* Members of the public were also given an opportunity to submit written comments for TPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-T-2023-0016.* On August 14, 2023, TPAC issued a written report setting forth their comments, advice, and recommendations regarding the preliminary proposed fees. The report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx.* The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing this NPRM. See Part IV: Rulemaking Goals and Strategies for further discussion of the TPAC Report.

III. Estimating Aggregate Costs and Revenue

Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs with respect to such trademark fees. The following is a description of how the agency estimates aggregate costs and revenue.

Step 1: Estimating Aggregate Costs

Estimating prospective aggregate costs is accomplished primarily through the annual budget formulation process. The annual budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement the agency's strategic goals and objectives.

First, the USPTO projects the level of demand for trademark services, which depends on many factors that are subject to change, including domestic and global economic activity. The agency also considers non-US trademark-related activities, policies, and legislation, and known process efficiencies. The number of trademark application filings (*i.e.,* incoming work to the USPTO) drives examination costs, which make up the largest share of trademark operating costs. The USPTO looks at indicators including the expected growth in real gross domestic product (RGDP), a leading indicator of incoming trademark applications, to estimate prospective workloads. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*) and forecasted each February by the Office of Management and Budget (OMB) (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives, and twice annually by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook.

The expected production workload is then compared to the current examination production capacity to determine any required staffing and operating costs (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The agency uses a trademark pendency model that estimates trademark production output based on actual historical data and input assumptions, such as incoming trademark applications, number of examining attorneys on board, and overtime hours. Key statistics regarding pendency, filing and application metrics, and current inventory used to inform the model can be viewed on the data visualization center section of the USPTO website at *https://www.uspto.gov/dashboard/trademarks.*

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of trademark operations. First, the agency estimates the costs of status quo operations (base requirements), then adjusts that figure for anticipated pay increases and inflationary increases for the budget year and four out years. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The agency then reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of budgetary requirements, aggregate costs, and related assumptions for the Trademarks program is available in the FY 2025 Budget.

The USPTO estimates that trademark operations will cost $594 million in FY 2025, including $293 million for trademark examining; $24 million for trademark trials and appeals; $50 million for trademark information resources; $22 million for activities related to intellectual property (IP) protection, policy, and enforcement; and $204 million for general support costs necessary for trademark operations (*e.g.,* the trademark share of rent, utilities, legal, financial, human resources, other administrative services, and agency-wide information technology (IT) infrastructure and support costs). See Appendix II of the FY 2025 Budget. In addition, the agency will transfer $280 thousand to the Department of Commerce, Inspector General, for audit support for the Trademarks program.

Table 1 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 2 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM. These projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in outyear budgetary requirements. There are risks that could materialize over the next several years (*e.g.,* adjustments to examination capacity, time allotted to examining attorneys and other personnel to perform their work, recompetitions of contracts, changes in workload, and inflationary increases, etc.) that could increase the USPTO's budgetary requirements in the short- to medium-term. These estimates are refreshed annually during the formulation of USPTO's budget.

TABLE 1—TRADEMARK PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029

Production measures	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Applications	774,000	817,000	863,000	912,000	964,000
Application growth rate	4.6%	5.5%	5.6%	5.7%	5.7%
Balanced disposals	1,552,600	1,680,000	1,740,000	1,850,000	1,930,000
Unexamined trademark application backlog	463,756	442,627	418,438	402,622	401,645
Examination capacity **	806	841	876	913	948
Performance measures:					
Avg. first action pendency (months)	7.5	6.3	5.9	5.5	4.9

TABLE 1—TRADEMARK PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029—Continued

Production measures	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Avg. total pendency (months)	13.5	11.3	10.9	9.5	8.9

* In this table, examination capacity is the number of examining attorneys on board at end of year, as described in the FY 2025 Budget.

Step 2: Estimating Prospective Aggregate Revenue

As described above in Step 1, the USPTO's prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated initiatives, and a contribution to the trademark operating reserve required for the agency to maintain trademark operations and realize its strategic goals and objectives for the next five years. Prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To estimate aggregate revenue, the USPTO references production models used to estimate aggregate costs and analyzes relevant factors and indicators to calculate prospective fee workloads (*e.g.,* number of applications and requests for services and products).

The same economic indicators used to forecast incoming workloads also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-registration decisions to maintain trademark protection. When developing fee workload forecasts, the USPTO also considers other factors including fraud and scams impacting trademark filings, overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

The USPTO collects fees for trademark-related services and products at different points in time within the application examination process and over the life of the pending trademark application and resulting registration. Trademark application filings are a key driver of trademark fee collections, as initial filing fees account for more than half of total trademark fee collections. Changes in application filing levels immediately impact current year fee collections because fewer application filings mean the USPTO collects fewer fees to devote to production-related costs. The resulting reduction in production activities also creates an outyear revenue impact because less production output in one year leads to fewer ITU and maintenance fee payments in future years. Historically, fee collections from ITU and maintenance fees account for about one third of total trademark fee collections, which the agency uses to subsidize costs for filing and examination activities not fully covered by initial filing fees.

The USPTO's five-year estimated aggregate trademark fee revenue (see Table 2) is based on, for each fiscal year, the number of trademark applications it expects to receive, work it expects to process (an indicator of the ITU fee workloads), expected examination and process requests, and the expected number of post-registration filings to maintain trademark registrations. The USPTO forecasts the same number of future year applications filed under the proposed fee schedule compared to the current fee schedule because outside research suggests that demand for trademark applications is inelastic. The USPTO does anticipate a larger share of filers will take measures to avoid the proposed surcharges compared to the share of filers that take advantage of the TEAS Plus option under the current fee schedule. The USPTO's Office of the Chief Economist periodically conducts economic studies and may, in the future, develop trademark fee price elasticity estimates for use in rulemakings.

Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. In the aggregate revenue estimates presented below, the agency assumes that all proposed fee rates will become effective on November 15, 2024. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (see Table 2). The aggregate revenue estimate also includes collecting $10 million annually in other income associated with recoveries and reimbursements from other Federal agencies (offsets to spending).

TABLE 2—TRADEMARK FINANCIAL OUTLOOK, FY 2025–2029

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
	Dollars in millions				
Projected fee collections	583	640	666	694	721
Other income	10	10	10	10	10
Total projected fee collections and other income	593	650	676	704	731
Budgetary requirements	594	611	635	664	690
Funding to (+) and from (−) operating reserve	(1)	40	40	40	41
End-of-year operating reserve balance	85	125	165	205	246
Over/(under) minimum level	(52)	(16)	19	52	87
Over/(under) optimal level	(212)	(181)	(153)	(127)	(99)

IV. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The strategy of this proposed rule is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate costs of maintaining USPTO trademark operations. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO's strategic goals and objectives, such as optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to

the trademark system for all stakeholders.

The USPTO assessed this proposed rule's alignment with four key fee setting policy factors that promote a particular aspect of the U.S. trademark system. (1) Promoting innovation strategies seeks to ensure barriers to entry into the U.S. trademark system remain low, encourage high-growth and innovation-based entrepreneurship, and incentivize innovation and entrepreneurship by issuing registrations to stimulate additional entrepreneurial activity. (2) Aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (*e.g.,* trademark applications cost more and take longer to examine when identifications of goods and services include thousands of characters), and charges those applicants appropriately rather than sharing the costs among all applicants. (3) Facilitating the effective administration of the trademark system seeks to encourage efficient prosecution of trademark applications, reducing the time it takes to obtain a registration. (4) Offering application processing options provides multiple paths, where feasible, in recognition that trademark prosecution is not a one-size-fits-all process. The reasoning for setting and adjusting individual fees is described in Part V: Individual Fee Rationale.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the USPTO reviewed in developing the proposed trademark fee schedule: (1) historical cost of providing individual services; (2) the balance between projected costs and revenue to meet the USPTO's operational needs and strategic goals; (3) ensuring sustainable funding; and (4) TPAC's comments, advice, and recommendations on the USPTO's initial fee setting proposal. Collectively, these considerations informed the USPTO's chosen rulemaking strategy.

1. Historical Cost of Providing Individual Services

The USPTO sets individual fee rates to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting application filing fees below the actual cost of processing and examining applications to encourage brand owners to take advantage of the protections and rights offered by trademark registration.

The USPTO considers unit cost data provided by its Activity Based Information (ABI) program to decide how to best align fees with the full cost of products and services. Using historical cost data, the USPTO can align fees to the costs of specific trademark products and services. When the USPTO implements a new process or service, historical activity-based information (ABI) data is typically not available. However, the USPTO will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

The document entitled ''USPTO Setting and Adjusting Trademark Fees During Fiscal Year 2025—Activity Based Information and Trademark Fee Unit Expense Methodology,'' available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* provides additional information on the agency's costing methodology in addition to the last three years of historical cost data. Part V: Individual Fee Rationale of this proposed rule describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate cost of providing services through fees.

2. Balancing Projected Costs and Revenue

In developing the proposed trademark fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals, as found in the FY 2025 Budget and the Strategic Plan. The USPTO's strategic goals include: (1) driving inclusive U.S. innovation and global competitiveness; (2) promoting the efficient delivery of reliable IP rights; (3) promoting the protection of IP against new and persistent threats; (4) bringing innovation to impact; and (5) generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost saving efforts taken by the USPTO, and planned strategic improvements.

a. Updated Revenue and Cost Estimates

Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs) due largely to lower-than-expected demand for trademark services compared to prior forecasts and higher-than-expected inflation in the broader U.S. economy that has increased the USPTO's operating costs. Consequently, aggregate operating costs will exceed aggregate revenue for the Trademarks program under the current schedule. Absent the proposed increase in fees or an unsustainable reduction in operating costs, the USPTO would deplete its operating reserves and significantly increase financial risk.

Forecasts for aggregate revenue using current demand estimates are lower than prior forecasts. This lower-than-expected demand has coincided with changes to trademark owners' filing and renewal patterns, resulting in some imbalances in the overall fee structure. The USPTO sets application filing fees below its examination costs to maintain a low barrier to entry into the trademark registration system and relies on fees collected for post-registration maintenance and ITU extensions to subsidize the agency's losses on each application examined. However, changes in the mix of filers and their preferences have upset the traditional balance of the trademark fee structure. The share of applicants filing ITU applications is declining. Also, the percentage of registrants that choose to maintain their trademark registration is declining as a larger share of filers are groups that are historically less likely to renew their registrations at a rate that would be sufficient to recover examination costs. The USPTO believes these changes in the mix of filers are systemic and will continue.

Following an unprecedented application surge in FY 2021, trademark application filings declined and began returning to historic filing levels in FY 2022, in line with the USPTO's expectations. Application filings were largely unchanged in FY 2023. Given the current economic outlook for the broader economy and filing activity over the past two years, the USPTO projects trademark application filings to decline slightly in FY 2024 and increase in line with historic growth rates in FY 2025.

Higher-than-expected inflation starting in 2021 in the broader U.S. economy increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise about two-thirds of all trademark-related costs, and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4% was in 2004. The FY 2025 Budget includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29,

as well as inflationary increases for other labor and nonlabor activities.

b. Cost-Saving Measures

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The USPTO has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to reduce spending when appropriate.

The USPTO's FY 2025 Budget submission includes cost reducing measures such as releasing leased space in Northern Virginia and a moderate reduction in overall IT spending. In FY 2025, the USPTO estimates $4,569 million in total spending for patent and trademark operations. This is a $122 million net increase from the agency's FY 2024 estimated spending level of $4,447 million. The net increase includes a $224 million upward adjustment for prescribed inflation and other adjustments, and a $102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the $40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of $12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately $52 million. Also, the USPTO is actively pursuing IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the USPTO's forecasted growth in patent and trademark applications. The USPTO will achieve this cost containment goal via modern equipment in a new data center that will cost less to maintain and by retiring legacy IT systems. These cost containment measures will also improve the USPTO's cybersecurity posture and increase system resiliency.

c. Efficient Delivery of Reliable IP Rights: Quality, Backlog, and Pendency

The USPTO's strategic goal to ''promote the efficient delivery of reliable IP rights'' recognizes the importance of innovation as the foundation of American economic growth and global competitiveness. Toward this end, the USPTO is committed to continuously improving trademark quality, as well as the accuracy and reliability of the trademark register. The agency will continue equipping trademark examining attorneys with updated tools, procedures, and clarifying guidance to effectively examine all applications. The USPTO will also retire legacy systems and integrate the use of emerging technologies to streamline work processes for greater efficiencies; adjust staffing levels; and refine core duties to ensure its ability to meet significant changes in filing volumes and a variety of improper filing behaviors.

The USPTO is also committed to improving trademark application pendency. The agency recognizes that applying for trademark registration is a key step for creators, entrepreneurs, and established brand owners as they move from generating ideas for new products and services to commercializing the resulting innovations in the marketplace. The USPTO is focused on incentivizing creativity and product innovation by removing unnecessary impediments or delays in securing IP rights, thereby bringing goods and services to impact for the public good more quickly.

The agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented, year-long influx during FY 2021 that created a significant examination backlog. In addressing these challenges, the USPTO will: (1) reevaluate its operating posture to maximize efficiency; (2) set data-driven pendency goals; (3) realign the trademark workforce to maintain stability during workload fluctuations and optimize pendency goals; and (4) use available technology solutions to streamline and automate trademark work processes.

The agency is working diligently to balance timely examination with trademark quality. Improvements include the deployment of a new browser-based, end-to-end examination system (TM Exam) designed to improve examination quality and efficiency, and establishment of a dedicated Trademark Academy to improve the training experience for new examiners.

The USPTO is also developing and implementing several strategies to combat IP violations and protect the Trademark Register via legislation, IT enhancements, and tactical management programs. For example, the agency is implementing robotic process automation to validate trademark application addresses against the U.S. Postal Service's database, mitigating a key fraud risk. In addition, the USPTO recently formed the Register Protection Office (RPO), a new organization within the Office of the Deputy Commissioner for Trademark Examination Policy dedicated to register protection through efforts like scam education and prevention.

The USPTO is also leveraging Trademark Modernization Act (TMA) cancellation provisions to help clear the Trademark Register of registrations not in use. See Public Law 116–260. The agency implemented the TMA nonuse cancellation provisions in December 2021, and in December 2022, implemented additional provisions that shortened the applicant response period for office actions from six to three months. See Changes To Implement Provisions of the Trademark Modernization Act of 2020, 86 FR 64300 (Nov. 17, 2021). The USPTO will finish implementing the TMA in spring or early summer 2024, when additional provisions to shorten the period for registrants to respond to post-registration office actions from six to three months take effect. See Changes To Implement Provisions of the Trademark Modernization Act of 2020; Delay of Effective Date, 88 FR 62463 (Sep. 12, 2023).

The USPTO is also committed to generating impactful employee and customer experiences by maximizing agency operations. The USPTO strives to be a model employer through its diversity, equity, inclusion, and accessibility (DEIA) practices. The agency will build upon its existing diversity and foster greater inclusion to empower the USPTO workforce to serve the IP community successfully. To accomplish this, the USPTO will research and implement leading-edge practices related to hiring, development, advancement, accessibility, and retention, based on behavioral science research and data, to better integrate DEIA practices throughout the agency.

The USPTO recognizes that its core operating costs may increase in future years as the agency works to reduce trademark pendency, improve examination processes, enhance trademark quality and accuracy, and protect entrepreneurs and innovators from fraud.

3. Sustainable Funding

The USPTO's five-year forecasts of aggregate trademark costs, aggregate trademark revenue, and the trademark operating reserve are inherently uncertain. The Government Accountability Office (GAO) recommends operating reserves as a best practice for fee-funded agencies like the

USPTO, and the trademark operating reserve allows the agency to align long-term fees and costs and manage fluctuations in actual fee collections and spending.

The USPTO manages the trademark operating reserve within a range of acceptable balances and assesses options when projected balances fall either below or above the range. The agency develops minimum planning targets to address immediate, unplanned changes in the economic or operating environment as the reserve builds toward the optimal level. The USPTO reviews both its minimum and optimal planning targets every three years to ensure the reserve's operating range mitigates an array of financial risks. Based on the current risk environment, including various factors such as economic and funding uncertainty and the Trademarks program's high percentage of fixed costs, the agency recently established a minimum operating reserve planning level at 23% of total spending—about three months' operating expenses (estimated at $137 million and $159 million from FY 2025 through FY 2029)—and an optimal long-range target of 50% of total spending—about six months' operating expenses (estimated at $297 million and $345 million from FY 2025 through FY 2029).

Based on cost and revenue assumptions in the FY 2025 Budget, the USPTO forecasts that aggregate trademark costs will exceed aggregate trademark revenue during FY 2024. The agency will finance the shortfall in trademark operations via the trademark operating reserve. The USPTO projects that the fee proposals contained in this NPRM will increase trademark fee collections to sufficiently recover budgeted spending requirements; modest fee collections above budgeted spending requirements will replenish and grow the operating reserve each year from FY 2025 to FY 2029.

These projections are point-in-time estimates and subject to change. For example, the FY 2025 Budget includes assumptions regarding filing levels, renewal rates, federally mandated employee pay raises, workforce productivity, and many other factors. A change in any one of these variables could have a significant cumulative impact on the trademark operating reserve balance. As shown in Table 2, presented in Part III: Estimating Aggregate Costs and Revenue, the operating reserve balance can change significantly over a five-year planning horizon. This highlights the agency's financial vulnerability to various risk factors and the importance of its fee setting authority.

The USPTO will continue assessing the trademark operating reserve balance against its target balance annually, and at least every three years, the agency will evaluate whether the minimum and optimal target balances remain sufficient to provide stable funding. Per USPTO policy, the agency will consider fee reductions if projections show the operating reserve balance will exceed its optimal level by 25% for two consecutive years. In addition, the USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of trademark fees.

4. Comments, Advice, and Recommendations From TPAC

In its report prepared in accordance with the AIA fee setting authority, TPAC conveyed overall support for the USPTO's efforts to secure adequate revenue to recover the aggregate estimated costs of trademark operations. Specifically, the report states, ''[w]e [TPAC] have no doubt that overall increases are needed to ensure that the USPTO complies with its statutory mandate to set fees at a level commensurate with anticipated aggregate costs.'' TPAC Report at 3. TPAC also expressed general support for the USPTO's stated goals and methods for achieving aggregate cost recovery but was concerned about some individual fee adjustments and their potential impacts on trademark applicants and owners. This NPRM includes additional information that addresses these comments and additional feedback from the public.

TPAC expressed support for the proposed adjustments to application filing fees but noted that many public comments centered on proposed surcharges. TPAC asked the USPTO to consider how it will implement any surcharges and whether entity discounts may be possible. To address these concerns, the USPTO includes in this NPRM: (1) information on specific deficiencies that will trigger the insufficient information surcharge; (2) additional details that explain the agency's rationale for the Custom ID proposal; and (3) additional details regarding the ID character limit proposal. See Part V: Individual Fee Rationale for additional details. With respect to entity discounts, section 10(a) of the AIA authorizes the Director to set or adjust any fee established, authorized, or charged under the Trademark Act but, but it does not include the authority to provide entity discounts for trademark fees.

TPAC supported proposed fee increases for filing an amendment to allege use (AAU) and statement of use (SOU) but recommended that the USPTO modify the initial proposal to make the AAU fee less than the SOU fee to ''better align incentives for efficiency, because fewer resources are required to process an AAU.'' TPAC Report at 5. Based on this recommendation, the USPTO proposes setting the fees for both an AAU and SOU at $150. While the agency incurs different processing costs for these services, they have historically had identical fee rates; maintaining this symmetry will alleviate potential confusion among stakeholders and future USPTO customers.

TPAC did not support increased fees for fourth and fifth extensions of time to file an SOU. The committee stated that filers in highly regulated industries with long product launch timelines, as well as resource-constrained startups and small businesses, often need additional extensions. Weighing the need for timely ITU decisions against potential adverse impacts on innovators and small filers, the USPTO has opted to not further pursue this proposal.

TPAC expressed a general lack of support for increasing fees for renewals, declarations of use, and declarations of incontestability. TPAC is concerned the proposed increases could discourage registrants from maintaining their registrations and will likely lead to more common law investigations and higher clearance costs for many trademark owners. The USPTO acknowledges these concerns. However, the agency has an obligation to recover the aggregate costs of trademark operations through user fees, and above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. The share of applications from groups that have been historically less likely to maintain their registrations has increased. Therefore, the balance between aggregate revenue derived from application fees and post-registration maintenance fees must be adjusted to sustain low barriers to filing new applications.

Although TPAC did not favor higher maintenance fees in general, the committee offered support for increased fees for foreign and international registrants under sections 66, 44, and 71, noting that ''[o]wners of these registrations have not been required to prove use prior to registration'' and ''are more likely to describe an excessive list of goods and services, to offer suspect specimens and declarations, and to require auditing.'' TPAC Report at 6. TPAC recognized that such a proposal could ''implicate many factors, including compliance with international treaty obligations.'' TPAC Report at 6.

The USPTO decided not to charge foreign or international registrants a higher fee than domestic registrants for these services. The agency notes that proposed and existing fees address some TPAC concerns regarding foreign and international registrants. All applications and registrants are subject to fees for deleting goods, services, and/or classes following a post-registration audit and would be subject to the proposed surcharge for each additional group of 1,000 characters.

TPAC supported the proposals for petitions to revive and petitions to the Director as justified and appropriate.

TPAC expressed support for the USPTO directly recovering a larger portion of the cost associated with processing letters of protest but objected to the size of the proposed fee increase, noting that most public commenters were opposed. TPAC recommended a smaller increase, given the perceived value of meritorious letters in the examination process and as a cost-effective mechanism for members of the public to provide information to examining attorneys. In response, the USPTO has revised the proposed letter of protest fee downward to $150. See Part V: Individual Fee Rationale for additional details.

In summary, the USPTO appreciates the overall support and advice provided by TPAC and stakeholders to increase trademark fees to recover aggregate cost. After careful consideration of the comments, concerns, and advice provided in the TPAC Report, and keeping in mind the goals of this proposed rule, the USPTO elected to adjust two fee proposals and drop one proposal. The proposed fee structure will allow the USPTO to maintain trademark operations and pursue the goals and objectives outlined in its Strategic Plan. The agency looks forward to receiving additional feedback on this revised proposal during the public comment period.

C. Summary of Rulemaking Goals and Strategies

The USPTO estimates that the proposed trademark fee schedule will produce sufficient aggregate revenue to recover the aggregate costs of trademark operations and ensure financial sustainability for effective administration of the trademark system. This proposed rule aligns with the USPTO's four key fee setting policy factors and supports the agency's mission-focused strategic goals.

V. Individual Fee Rationale

Where unit cost data is available, the USPTO sets some fees at, above, or below their unit costs to balance the agency's four key fee setting policy factors as described in Part IV: Rulemaking Goals and Strategies. The USPTO does not maintain individual historical cost data for all fees, and therefore some fees are set solely based on the policy factors. For example, the USPTO sets initial filing fees below unit cost to promote innovation strategies by reducing barriers to entry for applicants. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above unit cost in areas less likely to impact entrepreneurship (*e.g.,* renewal fees). By setting fees at particular levels to facilitate effective administration of the trademark system, the USPTO aims to foster an environment where examining attorneys can provide, and applicants can receive, prompt, high-quality examination decisions while recovering costs for workload-intensive activities.

This proposed rule maintains existing cost differentials for all paper filings; their processing is generally more costly than electronic submissions, and current fees do not recover these costs.

1. Trademark Application Filing Fees

TABLE 3—TRADEMARK APPLICATION FILING FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Application (paper), per class	$750	$850	$100	13	$1,526
Base application (electronic), per class	n/a	350	n/a	n/a	n/a
Base application filed with WIPO (§ 66(a)), per class	n/a	350	n/a	n/a	n/a
Base application filed with WIPO (§ 66(a)) (subsequent designation), per class.	n/a	350	n/a	n/a	n/a
Application (TEAS Plus), per class	250	Discontinue	n/a	n/a	373
Application (TEAS Standard), per class	350	Discontinue	n/a	n/a	504
Fee for failing to meet TEAS Plus requirements, per class	100	Discontinue	n/a	n/a	3
Application fee filed with WIPO (§ 66(a)), per class	500	Discontinue	n/a	n/a	852
Subsequent designation fee filed with WIPO (§ 66(a)), per class.	500	Discontinue	n/a	n/a	819

The USPTO is proposing changes to application filing fees to incentivize more complete and timely filings and improve prosecution. Trademark applicants currently have two filing options via the Trademark Electronic Application System (TEAS): TEAS Plus and TEAS Standard. TEAS Plus is the lowest-cost filing option currently provided by the USPTO but comes with more stringent initial filing requirements. These applications reduce manual processing and potential for data entry errors, making them more efficient and complete for both the filer and the agency. The USPTO incurs fewer costs and impediments during their examination, thereby expediting processing and reducing pendency. About half of all trademark applications are filed using TEAS Plus. TEAS Standard fees are higher than those for TEAS Plus and offer applicants more options during filing; the higher fees relate to the higher costs incurred by the USPTO in processing and examining the application.

The USPTO proposes implementing a single electronic application filing option with most of the same requirements as TEAS Plus and eliminating TEAS Standard. In effect, the proposed fee schedule would discontinue both TEAS Plus and TEAS Standard filing fees, as well as fees for failing to meet the requirements of a TEAS Plus application, replacing them with a single electronic filing option. Similar to TEAS, applicants willing to comply with the proposed requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the proposed fee schedule, compared to applicants who fail to meet all of those requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year will change under the proposed schedule compared

to the current schedule. The USPTO does anticipate that a larger share of applicants will take measures to avoid the proposed surcharges compared to the share of applicants who use the TEAS Plus option under the current fee schedule. Applications that do not meet all requirements for the lowest cost electronic filing option are discussed below.

The proposed fee schedule sets the fee for a base application, filed electronically, at $350, $100 more than a TEAS Plus application, to help the agency recover its costs. The USPTO proposes increasing the paper application fee by $100 to maintain the existing cost differential between a paper filing and the lowest cost electronic application.

The USPTO proposes discontinuing current fees for filing an application under section 66(a) (Madrid Protocol) of the Trademark Act and setting new fees at $350 per class, as paid in Swiss francs to the World Intellectual Property Organization (WIPO), in line with the proposed base application fee under the new single electronic application filing option.

The USPTO proposes administrative revisions to the regulatory text in 37 CFR to incorporate the proposed base application fee and discontinuation of TEAS application fees. These proposed revisions include replacing references to ''TEAS'' and ''ESTTA'' with ''electronically'' in sections 2.6 and 7.6 to reflect the discontinuation of TEAS fees under this proposed rule. These generalized references for electronic filings are more dynamic and will more easily accommodate any future changes to the USPTO's electronic filing system.

2. Trademark Application Filing Surcharge Fees

TABLE 4—TRADEMARK APPLICATION FILING SURCHARGE FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Fee for insufficient information (§§ 1 and 44), per class	n/a	$100	n/a	n/a	n/a
Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class	n/a	200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class	n/a	200	n/a	n/a	n/a
Fee for insufficient information (§ 66(a)), per class	n/a	100	n/a	n/a	n/a
Fee for using the free-form text box to enter the identification of goods/services (§ 66(a)), per class	n/a	200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (§ 66(a)), per class	n/a	200	n/a	n/a	n/a

The USPTO also proposes surcharges to the base application filing fee to enhance the quality of incoming applications, encourage efficient application processing, ensure additional examination costs are paid by those submitting more time-consuming applications, and reduce pendency. Only those applicants submitting applications that do not comply with the base filing requirements would pay the proposed surcharges. Compared to the current TEAS Standard fee that is charged for applications when one or more TEAS Plus requirements are not met, the proposed system would impose individual surcharges when certain requirements are not met.

(i) Insufficient Information Fee

Trademark applications that include the information listed below allow for more efficient prosecution. Accordingly, applicants who submit more complete applications benefit from the proposed fee schedule by avoiding this proposed surcharge, as the USPTO and its stakeholders benefit from efficient delivery of reliable IP rights. This proposed rule would impose a $100 fee per class, in addition to the base fee, on applications that do not include required information at the time of filing. The information required for a base application is similar to current TEAS Plus requirements and therefore applicants are not expected to expend more than a de minimis amount of additional resources compared to the current TEAS system. The USPTO proposes reordering and retitling these as ''Requirements for a base application,'' as provided in 37 CFR 2.22:

(1) The applicant's name and domicile address;

(2) The applicant's legal entity;

(3) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;

(4) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;

(5) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;

(6) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);

(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or likeness, either (i) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of

the individual, or (ii) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

See Part VI: Discussion of Specific Rules for more information.

The agency will not impose this fee on applications denied a filing date for failure to satisfy the requirements under 37 CFR 2.21.

(ii) Entering Identifications of Goods and/or Services in the Free-Form Text Field Fee

Applicants may choose goods and/or services identifications by selecting them directly from the Trademark Next Generation ID Manual (ID Manual) in the electronic application or enter them manually in a free-form text box. The USPTO proposes a $200 fee per class for descriptions of goods and services entered in the free-form text field.

Generally, examining attorneys do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in a free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. Examining attorneys must review each entry to determine its acceptability, even in situations where an applicant types or pastes the ID Manual identification, because they do not know if wording in the free-form text field came from the ID Manual.

Identifying an applicant's goods and/or services with sufficient specificity is necessary to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use, or is using, the mark. It also ensures the applicant pays the corresponding fee for each class of goods and/or services. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text field and may initiate multiple communications with the applicant before determining an acceptable identification and collecting the appropriate fees. The proposed surcharge would help recover the additional costs associated with these more extensive reviews.

(iii) Each Additional 1,000 Characters Beyond 1,000, per Class Fee

In addition to entering identifications in the free-form text field, some applicants submit extensive lists of goods and/or services. In more egregious cases, a list may comprise multiple pages and include goods and services in multiple classes. To ensure that applicants who submit lengthy identifications pay the costs of reviewing them, the USPTO proposes a fee of $200 for each additional group of 1,000 characters beyond the first 1,000 characters in the free-form text field, including punctuation and spaces. The fee would also apply to amended identifications that exceed the character limit in a response to an office action. Approximately 9% of trademark applications contain identifications of goods and/or services that exceed 1,000 characters per class. Applicants who enter identifications directly from the ID Manual within the electronic application would not incur this fee, even if the identification exceeds 1,000 characters.

The USPTO selected a character-based limit for operational efficiency, as the electronic application system can perform character counts in real time and alert the applicant when the limit has been exceeded. A limit based on other criteria, such as a count of separate goods and/or services, would require examiner review, as automating such counts is not technologically feasible. Such reviews by an examining attorney would increase the cost of examination, counteracting the purpose of the proposed fee, which is to ensure that applicants who submit lengthy identifications pay the costs of reviewing them.

3. Amendment To Allege Use and Statement of Use Fees

TABLE 5—AAU AND SOU FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Amendment to allege use (AAU), per class (paper)	$200	$250	$50	25	n/a
Statement of use (SOU), per class (paper)	200	250	50	25	n/a
Amendment to allege use (AAU), per class (electronic)	100	150	50	50	$117
Statement of use (SOU), per class (electronic)	100	150	50	50	240

The USPTO proposes a $50 fee increase for AAUs and SOUs (from $100 to $150 per class for electronic filings and $200 to $250 per class for paper filings). The agency has not adjusted AAU and SOU fees since 2002, even as processing costs increased during the subsequent two decades. This proposal improves cost recovery and helps rebalance the fee structure.

4. Post-Registration Maintenance Fees

TABLE 6—POST-REGISTRATION MAINTENANCE FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
§ 9 registration renewal application, per class (paper)	$500	$550	$50	10	$106
§ 8 declaration, per class (paper)	325	400	75	23	152
§ 15 declaration, per class (paper)	300	350	50	17	152

TABLE 6—POST-REGISTRATION MAINTENANCE FEES—Continued

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
§ 71 declaration, per class (paper)	325	400	75	23	n/a
§ 9 registration renewal application, per class (electronic)	300	350	50	17	24
§ 8 declaration, per class (electronic)	225	300	75	33	25
§ 15 declaration, per class (electronic)	200	250	50	25	25
§ 71 declaration, per class (electronic)	225	300	75	33	6
Renewal fee filed at WIPO	300	350	50	17	n/a

The percentage of trademark registrants choosing to maintain their registrations is declining. The USPTO expects this trend to continue due to anticipated growth in application submissions from groups historically less likely to maintain a registration. Given these changes in demand and filing behaviors, the agency proposes rebalancing aggregate revenue derived from renewals and other post-registration maintenance fees, including declarations of use and incontestability, to keep barriers to entry low for new applicants.

5. Letter of Protest Fee

TABLE 7—LETTER OF PROTEST FEE

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Letter of protest	$50	$150	$100	200	$312

The USPTO proposes a $100 fee increase for filing a letter of protest (from $50 to $150). The proposed fee is less than half the agency's cost of processing a letter of protest, which allows a third party to bring evidence to the USPTO on the registrability of a mark in a pending application without filing an opposition with the Trademark Trial and Appeal Board (TTAB). The letter of protest procedure is not a substitute for the statutory opposition and cancellation procedures available to third parties who believe they would be damaged by registration of the involved mark. Instead, it is intended to assist examination without causing undue delay or compromising the integrity and objectivity of the ex parte examination process, which involves only the applicant and the USPTO.

The USPTO's costs for reviewing and processing each letter of protest are more than six times the current fee. This imbalance between the fee collected and the cost to perform the service are compounded by a substantial increase in letters of protest forwarded to the USPTO each year, which have risen from about 2,300 in FY 2016 to nearly 4,000 in FY 2023. The agency estimates this volume will grow to more than 5,000 letters annually by FY 2029, further increasing the USPTO's overall associated costs.

When viewed in the context of USPTO actions because of letters of protest, the agency's costs are considerable, while the letters have a minor impact on examination outcomes. During FY 2022, the USPTO decided 4,557 letters of protest, of which 1,433 (31%) were not in compliance with 37 CFR 2.149 and therefore not included in the record of examination. Of the letters entered into the record, examining attorneys issued a refusal based on the asserted ground(s) in 1,213 cases (27% of letters decided). Examining attorneys likely would have issued a refusal in these cases even without a letter of protest. The USPTO only identified 27 (0.59%) letters in FY 2022 that corresponded to an error in publishing a mark for opposition, similar to historical shares of letters decided each year.

TABLE 8—LETTERS OF PROTEST FILED AND LETTERS CORRESPONDING TO SITUATIONS WHERE THE USPTO PUBLISHED A MARK FOR OPPOSITION IN ERROR, BY FISCAL YEAR

Fiscal year	Letters of protest decided	Letters corresponding to a mark published in error	Share of total letters decided (%)
2016	2,258	17	0.75
2017	2,726	13	0.48
2018	3,386	28	0.83
2019	4,106	43	1.05
2020	3,534	22	0.62
2021	3,756	39	1.04
2022	4,557	27	0.59

In accordance with the USPTO's fee setting policy factors, this proposal recovers more of the costs associated with letters of protest, although the fee remains below the agency's full costs.

6. Other Petition Fees

TABLE 9—OTHER PETITION FEES

Description	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Petition to the Director (paper)	$350	$500	$150	43	n/a
Petition to revive an application (paper)	250	350	100	40	n/a
Petition to the Director (electronic)	250	400	150	60	886
Petition to revive an application (electronic)	150	250	100	67	94

Optional petitions are a valuable, though costly, part of the trademark registration process, and other trademark fees subsidize the USPTO's processing costs. The proposed fee schedule would recover more costs associated with the extensive and lengthy review these services require, while also encouraging more timely and efficient filing behaviors.

VI. Discussion of Specific Rules

The following section describes the changes proposed in this rulemaking, including all proposed fee amendments, fee discontinuations, and changes to the regulatory text.

Section 2.6

Section 2.6 is proposed to be amended by revising paragraph (a), to set forth trademark process fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 2.6 are shown in Table 10.

The USPTO proposes to revise the text to (a)(1)(iii) to provide for filing ''an application electronically'' rather than filing ''a TEAS Standard application.''

The USPTO proposes to revise (a)(1)(iv) to provide for the proposed surcharge for insufficient information.

The USPTO proposes to revise (a)(1)(v) to provide for the proposed surcharge for adding goods and/or services in the free-form text field.

The USPTO proposes adding (a)(1)(vi) to provide for the proposed surcharge for each additional 1,000 characters.

The USPTO proposes to revise the text to (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(ii) and (iv), (a)(13)(ii), (a)(14)(ii), (a)(15)(ii) and (iv), (a)(16)(ii), (a)(17)(ii), (a)(18)(ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(27), and (a)(28)(ii) and by replacing references to ''TEAS'' or ''ESTTA'' with ''electronically.''

To clarify fees paid for services provided by the TTAB, the USPTO proposes to revise the text to (a)(18)(i) and (a)(18)(ii) by removing references to the TTAB and adding references to the TTAB to (a)(16), (a)(17), and (a)(18).

TABLE 10—CFR 2.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
2.6(a)(1)(i)	6001	Application (paper), per class	Paper	$750	$850.
2.6(a)(1)(ii)	7931	Application fee filed with WIPO (§ 66(a)), per class.	Electronic	500	Discontinue.
2.6(a)(1)(ii)	7933	Subsequent designation fee filed with WIPO (§ 66(a)), per class.	Electronic	500	Discontinue.
2.6(a)(1)(ii)	New	Base application filed with WIPO (§ 66(a)), per class.	Electronic	n/a	$350.
2.6(a)(1)(ii)	New	Base application filed with WIPO (§ 66(a)) (subsequent designation), per class.	Electronic	n/a	$350.
2.6(a)(1)(iii)	7009	Application (TEAS Standard), per class.	Electronic	350	Discontinue.
2.6(a)(1)(iii)	New	Base application, per class	Electronic	n/a	$350.
2.6(a)(1)(iv)	7007	Application (TEAS Plus), per class.	Electronic	250	Discontinue.
2.6(a)(1)(iv)	New	Fee for insufficient information (§§ 1 and 44), per class.	Paper	n/a	$100.
2.6(a)(1)(iv)	New	Fee for insufficient information (§§ 1 and 44), per class.	Electronic	n/a	$100.
2.6(a)(1)(iv)	New	Fee for insufficient information (§ 66(a)), per class.	Electronic	n/a	$100.
2.6(a)(1)(v)	6008	Fee for failing to meet TEAS Plus requirements, per class.	Paper	100	Discontinue.
2.6(a)(1)(v)	7008	Fee for failing to meet TEAS Plus requirements, per class.	Electronic	100	Discontinue.
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class.	Paper	n/a	$200.
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (§§ 1 and 44), per class.	Electronic	n/a	$200.

TABLE 10—CFR 2.6 FEE CHANGES—Continued

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (§ 66(a)), per class.	Electronic	n/a	$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class (paper).	Paper	n/a	$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§§ 1 and 44), per class.	Electronic	n/a	$200.
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (§ 66(a)), per class.	Electronic	n/a	$200.
2.6(a)(2)(i)	6002	Amendment to allege use (AAU), per class.	Paper	200	$250.
2.6(a)(2)(ii)	7002	Amendment to allege use (AAU), per class.	Electronic	100	$150.
2.6(a)(3)(i)	6003	Statement of use (SOU), per class.	Paper	200	$250.
2.6(a)(3)(ii)	7003	Statement of use (SOU), per class.	Electronic	100	$150.
2.6(a)(5)(i)	6201	§ 9 registration renewal application, per class.	Paper	500	$550.
2.6(a)(5)(ii)	7201	§ 9 registration renewal application, per class.	Electronic	300	$350.
2.6(a)(12)(i)	6205	§ 8 declaration, per class	Paper	325	$400.
2.6(a)(12)(ii)	7205	§ 8 declaration, per class	Electronic	225	$300.
2.6(a)(13)(i)	6208	§ 15 declaration, per class	Paper	300	$350.
2.6(a)(13)(ii)	7208	§ 15 declaration, per class	Electronic	200	$250.
2.6(a)(15)(i)	6005	Petition to the Director	Paper	350	$500.
2.6(a)(15)(ii)	7005	Petition to the Director	Electronic	250	$400.
2.6(a)(15)(iii)	6010	Petition to revive an application.	Paper	250	$350.
2.6(a)(15)(iv)	7010	Petition to revive an application.	Electronic	150	$250.
2.6(a)(25)	7011	Letter of protest	Electronic	50	$150.

Section 2.22

Section 2.22 is proposed to be amended by revising the section heading and paragraph (a) to set forth the requirements for a base application fee.

The USPTO proposes to revise the section heading to read ''Requirements for base application fee.''

The USPTO proposes to revise the introductory text to paragraph (a) to reflect the requirements for an application for registration under section 1 or section 44 of the Act that meet the requirements for a filing date under § 2.21 to pay the base application fee.

The USPTO proposes to remove paragraph (a)(7) and redesignate paragraphs (a)(8) through (a)(20) as paragraphs (a)(7) through (a)(19).

The USPTO proposes to revise the text to redesignated paragraph (a)(11) by replacing the reference to ''TEAS Plus form'' with ''application.''

The USPTO proposes to revise the text in paragraph (17) introductory text and (17)(ii) by replacing references to ''portrait'' with ''likeness'' to maintain consistency within the paragraph.

The USPTO proposes adding paragraph (a)(20) which establishes the requirement of using correctly classified goods and/or services from the ID Manual.

The USPTO proposes to revise paragraph (b) to provide that an applicant must pay the proposed fee for insufficient information, per class if the application fails to satisfy any of the requirements in paragraph (a)(1) through (19) of this section.

The USPTO proposes to revise paragraph (c) to provide that an applicant must pay the proposed fee for using the free-form text box to enter the identification of goods/services, per class if the application fails to satisfy the requirements of paragraph (a)(20) of this section.

The USPTO proposes to revise paragraph (d) to provide that an applicant must pay the proposed fee for each additional group of 1,000 characters beyond the first 1,000, per class, if the application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters.

Section 2.71

Section 2.71 is proposed to be amended by revising the introductory text and paragraph (a) to set forth amendments to correct informalities.

The USPTO proposes to revise the introductory text by replacing the period at the end of the paragraph with a colon.

The USPTO proposes to revise paragraph (a) by redesignating paragraph (a) as paragraph (a)(1). The USPTO proposes adding paragraph (a)(2) to provide that amendments to the identification of goods and/or services

that result in the identification exceeding 1,000 characters in any class will be subject to the proposed fee for each additional 1,000 characters beyond the first 1,000, per class.

Section 7.6

Section 7.6 is proposed to be amended by revising paragraph (a) to set forth the schedule of U.S. process fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 7.6 are shown in Table 11.

The USPTO proposes to revise the text to (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (a)(6)(ii) and (iv) and replace references to ''TEAS'' or ''ESTTA'' with ''electronically.''

TABLE 11—CFR SECTION 7.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Proposed fee
7.6(a)(6)(i)	6905	§ 71 declaration, per class	Paper	$325	$400
7.6(a)(6)(ii)	7905	§ 71 declaration, per class	Electronic	225	300

VII. Rulemaking Considerations

A. America Invents Act

This proposed rule seeks to set and adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) authorizes the Director to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act for any services performed by, or materials furnished by, the USPTO (see section 10 of the AIA, Pub. L. 112–29, 125 Stat. 284, 316–17, as amended by Pub. L. 115–273, 132 Stat. 4158). Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services.

Section 10(e) sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

TPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of trademark operations. When adopting fees under section 10, the AIA requires the Director to provide TPAC with the proposed fees at least 45 days prior to publishing them in the **Federal Register**. TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing(s) on the proposed fees. TPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the USPTO issues any final fees. The USPTO is required to consider and analyze any comments, advice, or recommendations received from TPAC before finally setting or adjusting fees.

Consistent with this framework, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given the opportunity to provide oral testimony. A transcript of the hearing is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf.* Members of the public were also given the opportunity to submit written comments for TPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-T-2023-0016.* On August 14, 2023, TPAC issued a written report setting forth in detail its comments, advice, and recommendations regarding the preliminary proposed fees. The TPAC Report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx.* The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing this NPRM. Further discussion of the TPAC Report can be found in the section titled ''Fee Setting Considerations.''

B. Regulatory Flexibility Act (RFA)

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the RFA (5 U.S.C. 601 *et seq.*) to examine the impact of the USPTO's proposed changes to trademark fees on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 603, 605). This IRFA incorporates discussion of the proposed changes in Part VI: Discussion of Proposed Rule Changes above.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the USPTO considered, as specified in 5 U.S.C. 603(c).

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the USPTO. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs for processing, activities, services, and materials relating to trademarks, including USPTO administrative costs with respect to such trademark fees. The proposed fee schedule will recover the aggregate costs of trademark operations while enabling the USPTO to predictably finance the agency's daily operations and mitigate financial risks.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The policy objectives of this proposed rule are to: (1) recover aggregate costs to finance the mission, strategic goals, and priorities of the USPTO; (2) enable financial sustainability; (3) better align fees with costs of provided services; (4) improve processing efficiencies; (5) enhance the quality of incoming

applications; and (6) offer affordable processing options to stakeholders. Additional information on the USPTO's goals and operating requirements may be found in the ''USPTO FY 2025 President's Budget Request,'' available on the USPTO website at *https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information.* The legal basis for this proposed rule is section 10 of the AIA, as amended, which provides authority for the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act. See also section 31 of the Trademark Act, 15 U.S.C. 1113.

3. A Description of and, Where Feasible, an Estimate of the Number of Affected Small Entities to Which the Proposed Rule Will Apply

The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, and this information would be required to determine the number of small entities that would be affected by this proposed rule.

This proposed rule would apply to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions in the FY 2025 Budget, that during the first full fiscal year under the fees as proposed (FY 2026), the USPTO would collect approximately $144 million more in trademark processing and TTAB fees compared to projected fee collections under the current fee schedule. The USPTO would receive an additional $99 million in application filing fees, including applications filed through the Madrid Protocol and application surcharges; $4 million more from petitions, letters of protest, and requests for reconsideration; $7 million more from SOU and AAU fees; and $35 million more for post-registration maintenance fees, including sections 9 and 66 renewals and sections 8, 71, and 15 declarations.

The USPTO collects fees for trademark-related services at different points in the trademark application examination process and over the registration life cycle. In FY 2023, application filing fees made up about 54% of all trademark fee collections. Fees for proceedings and appeals before the TTAB comprised 3% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing totaled approximately 5% of revenues. Fees for post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and the TTAB, comprised 38%.

The USPTO bases its five-year estimated aggregate trademark fee revenue on the number of trademark applications and other fee-related filings it expects for a given fiscal year; work it expects to process in a given fiscal year (an indicator of fees paid after the agency performs work, such as SOU fees); expected examination and process requests in a given fiscal year; and the expected number of post-grant decisions to maintain trademark protection in a given fiscal year. Within its iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on policy and cost considerations and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee, which is then used to calculate aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available on the fee setting section of the USPTO website at *https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This proposed rule imposes no new reporting or recordkeeping requirements. The main purpose of this proposed rule is to set and adjust trademark fees.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

This proposed rule would not duplicate, overlap, or conflict with any other Federal rules.

6. A Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered four alternatives, based on the assumptions found in the FY 2025 Budget, before recommending this proposal: (1) the adjustments included in this proposal; (2) fees set at the unit cost of providing individual services based on FY 2022 costs; (3) an across-the-board fee adjustment of 27%; and (4) no change to the baseline of current fees. The four alternatives are explained here with additional information regarding the development of each proposal and aggregate revenue estimate. A description of the Aggregate Revenue Estimating Methodology is available on the fee setting section of the USPTO website at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

a. Alternative 1: Proposed Alternative—Set and Adjust Trademark Fees

The USPTO proposes to set and adjust trademark fees codified in 37 CFR parts 2 and 7. This proposal adjusts fees for all application filing types (*i.e.,* paper applications, electronic applications, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)), including new surcharge fees. The USPTO also proposes to increase other trademark fees to promote effective administration of the trademark system, including fees for post-registration maintenance under sections 8, 9, and 71, certain petitions to the Director, and filing a letter of protest.

The USPTO chose the alternative proposed in this rule because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative proposed here finances the USPTO's objectives for meeting its goals outlined in the Strategic Plan. These goals include optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders. The proposed alternative will benefit all applicants and registrants by allowing the agency to grant registrations sooner and more efficiently. All trademark applicants should benefit from the efficiencies realized under the proposed alternative.

The USPTO anticipates that the impact of an increased fee on letter of protest filers would be small. The proposed fee of $150 is set at a level low enough to enable the filing of relevant, well-supported letters, but high enough to recover some additional processing costs. The USPTO enacted the current fee for letters of protest on November 17, 2020 (85 FR 73197) and implemented it on January 2, 2021. Despite this fee, the USPTO received almost 4,000 letters in each of the last two fiscal years and expects the volume will grow to more than 5,000 letters per year by FY 2029.

The proposed fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025–IRFA Tables.''

b. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, the USPTO considered three other alternative approaches. The agency calculated proposed fees and the resulting revenue derived from each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* Please note, only the fees outlined in Alternative 1 are proposed in this NPRM; other alternative scenarios are shown only to demonstrate the analysis of other options.

Alternative 2: Unit Cost Recovery

The USPTO considered an alternative that would set all trademark fees to recover 100% of unit costs associated with each service, based on historical unit costs. The USPTO uses the ABI to determine the unit costs of activities that contribute to the services and processes associated with individual fees. It is common practice in the Federal Government to set a particular fee at a level that recovers the cost of a given good or service. OMB Circular A–25, User Charges, states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good when the Government is acting in its capacity as sovereign. Under the USPTO's unit cost recovery alternative, fees are generally set in line with the FY 2022 costs of providing the service. The agency recognizes that this approach does not account for changes in the fee structure or inflationary factors that could likely increase the costs of certain trademark services and necessitate higher fees in the outyears. However, the USPTO contends that FY 2022 data is the best available to inform this analysis.

This alternative does not align well with the strategic and policy goals of this proposed rule. It would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does not address improvements in fee design to accomplish the agency's stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners, as well as practices that improve process efficiency.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025—IRFA Tables.''

Alternative 3: Across-the-Board Adjustment

The USPTO considered a 27% across-the-board increase for all fees. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees for ITU extensions and post-registration maintenance filings (which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This fee schedule would continue to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative would also generate sufficient aggregate revenue to recover aggregate operating costs.

The agency ultimately rejected this proposal. Unlike the proposed fee schedule, it would not enhance the efficiency of trademark processing and offer no new incentives for users to file more efficient and complete applications.

The proposed fee schedule for this alternative is available in the document titled ''Initial Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Alternative 4: Baseline (Current Fee Schedule)

The final alternative the agency considered would leave all trademark fees as currently set. The USPTO rejected this alternative because, due to changes in demand for certain services and rising costs, a fee increase is necessary to meet future budgetary requirements as described in the FY 2025 Budget. Under this alternative, the USPTO would expect to collect sufficient revenue to continue executing only some, but not all, trademark priorities. This approach would not provide sufficient aggregate revenue to accomplish the USPTO's rulemaking goals as stated in Part IV: Rulemaking Goals and Strategies. Improvement activities, including better protecting the Trademark Register through legislation, enhanced IT, and tactical management programs would continue, but at a significantly slower rate as increases in core trademark examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its trademark operating reserve, leaving the agency vulnerable to fiscal and economic events. This alternative would expose core operations to unacceptable levels of financial risk and position the USPTO to return to making inefficient, short-term funding decisions.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025—IRFA Tables.''

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be Significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review.

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The USPTO has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of this proposed rule; (2) tailored this proposed rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under E.O. 13211 because this proposed rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the GAO. The changes in this proposed rule are expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this proposed rule is a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The proposed changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements which are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, 0651–0061, and 0651–0086.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons set forth in the preamble, and under the authority contained in section 10(a) of the AIA, 15 U.S.C. 1113, 1123, and 35 U.S.C. 2, as amended, 37 CFR parts 2 and 7 are proposed to be amended as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284; Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Section 2.6 is amended by:
■ a. Revising paragraphs (a)(1)(i) through (v);
■ b. Adding paragraph (a)(1)(vi); and
■ c. Revising paragraphs (a)(2)(i) and (ii), (3)(i) and (ii), (4)(ii), (5)(i) and (ii), (6)(ii), (7)(ii), (8)(ii), (9)(ii), (10)(ii), (11)(ii), (12)(i), (ii), and (iv), (13)(i) and (ii), (14)(ii), (15)(i) through (iv), (16) introductory text, (16)(ii), (17) introductory text, (17)(ii), (18) introductory text, (18)(i), (ii), (v), (vii), (19)(ii), (20)(ii), (21)(ii), (22)(ii), (23)(ii), (25), (27), and (28)(ii).

The revisions and additions read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) * * *

(i) For filing an application on paper, per class—$850.00.

(ii) For filing an application under section 66(a) of the Act, per class—$350.00.

(iii) For filing an application electronically, per class—$350.00.

(iv) Additional fee under § 2.22(b), per class—$100.00.

(v) Additional fee under § 2.22(c), per class—$200.00.

(vi) Additional fee under § 2.22(d) for each additional 1,000 characters in identifications of goods/services beyond the first 1,000 characters, per class—$200.00.

(2) * * *

(i) For filing an amendment to allege use under section 1(c) of the Act on paper, per class—$250.00.

(ii) For filing an amendment to allege use under section 1(c) of the Act electronically, per class—$150.00.

(3) * * *

(i) For filing a statement of use under section 1(d)(1) of the Act on paper, per class—$250.00.

(ii) For filing a statement of use under section 1(d)(1) of the Act electronically, per class—$150.00.

(4) * * *

(ii) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act electronically, per class—$125.00.

(5) * * *

(i) For filing an application for renewal of a registration on paper, per class—$550.00.

(ii) For filing an application for renewal of a registration electronically, per class—$350.00.

(6) * * *

(ii) Additional fee for filing a renewal application during the grace period electronically, per class—$100.00.

(7) * * *

(ii) For filing to publish a mark under section 12(c), per class electronically—$100.00.

(8) * * *

(ii) For issuing a new certificate of registration upon request of registrant, request filed electronically—$100.00.

(9) * * *

(ii) For a certificate of correction of registrant's error, request filed electronically—$100.00.

(10) * * *

(ii) For filing a disclaimer to a registration electronically—$100.00.

(11) * * *

(ii) For filing an amendment to a registration electronically—$100.00.

(12) * * *

(i) For filing an affidavit under section 8 of the Act on paper, per class—$400.00.

(ii) For filing an affidavit under section 8 of the Act electronically, per class—$300.00.

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act electronically, per class—$250.00.

(13) * * *

(i) For filing an affidavit under section 15 of the Act on paper, per class—$350.00.

(ii) For filing an affidavit under section 15 of the Act electronically, per class—$250.00.

(14) * * *

(ii) Additional fee for filing a section 8 affidavit during the grace period electronically, per class—$100.00.

(15) * * *

(i) For filing a petition under § 2.146 or § 2.147 on paper—$500.00.

(ii) For filing a petition under § 2.146 or § 2.147 electronically—$400.00.

(iii) For filing a petition under § 2.66 on paper—$350.00.

(iv) For filing a petition under § 2.66 electronically—$250.00.

(16) Petition to cancel to the Trademark Trial and Appeal Board.

* * * * *

(ii) For filing a petition to cancel electronically, per class—$600.00.

(17) Notice of opposition to the Trademark Trial and Appeal Board.

* * * * *

(ii) For filing a notice of opposition electronically, per class—$600.00.

(18) Ex parte appeal to the Trademark Trial and Appeal Board.

(i) For filing an ex parte appeal on paper, per class—$325.00.

(ii) For filing an ex parte appeal electronically, per class—$225.00.

* * * * *

(v) For filing a second or subsequent request for an extension of time to file an appeal brief electronically, per application—$100.00.

* * * * *

(vii) For filing an appeal brief electronically, per class—$200.00.

(19) * * *

(ii) Request to divide an application filed electronically, per new application created—$100.00.

(20) * * *

(ii) For correcting a deficiency in a section 8 affidavit via electronic filing—$100.00.

(21) * * *

(ii) For correcting a deficiency in a renewal application via electronic filing—$100.00.

(22) * * *

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) electronically—$200.00.

(23) * * *

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) electronically—$400.00.

* * * * *

(25) *Letter of protest.* For filing a letter of protest, per subject application—$150.00.

* * * * *

(27) Extension of time for filing a response to a non-final Office action under § 2.93(b)(1). For filing a request for extension of time for filing a response to a non-final Office action under § 2.93(b)(1) electronically—$125.00.

(28) * * *

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) electronically—$125.00.

* * * * *

■ 3. Section 2.22 is amended by:

■ a. Revising the section heading; and

■ b. Revising paragraph (a) introductory text, and (a)(7) through (20), and (b) through (d).

The revisions read as follows:

§ 2.22 Requirements for base application fee.

(a) An application for registration under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be subject only to the filing fee under § 2.6(a)(1)(iii), and an application under section 66(a) of the Act will be subject only to the filing fee under § 2.6(a)(1)(ii), if it includes:

* * * * *

(7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);

(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or likeness, either (i) a statement that identifies the living

individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

(b) If an application fails to satisfy any of the requirements of paragraph (a)(1)-(19) of this section, the applicant must pay the fee required by § 2.6(a)(1)(iv).

(c) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, the applicant must pay the fee required by § 2.6(a)(1)(v).

(d) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters, the applicant must pay the fee required by § 2.6(a)(1)(vi) for each affected class.

■ 4. Section 2.71 is amended by:

■ a. Revising introductory text,

■ b. Redesignating paragraph (a) as paragraph (a)(1); and

■ c. Adding paragraph (a)(2).

The revisions read as follows:

§ 2.71 Amendments to correct informalities.

The applicant may amend the application during the course of examination, when required by the Office or for other reasons:

(a)(1) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services or the description of the nature of the collective membership organization.

(2) An amendment to the identification of goods and/or services that results in the identification exceeding 1,000 characters in any class is subject to payment of the fee required by § 2.6(a)(1)(vi) for each affected class.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 1. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

■ 2. Section 7.6 is amended by revising paragraphs (a)(1)(ii), (2)(ii), (3)(ii), (4)(ii), (5)(ii), (6)(i), (ii) and (iv), (7)(ii), and (8)(ii) to read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) * * *

(1) * * *

(ii) For certifying an international application based on a single basic application or registration filed electronically, per class—$100.00.

(2) * * *

(ii) For certifying an international application based on more than one basic application or registration filed electronically, per class—$150.00.

(3) * * *

(ii) For transmitting a subsequent designation under § 7.21, filed electronically—$100.00.

(4) * * *

(ii) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed electronically—$100.00.

(5) * * *

(ii) For filing a notice of replacement under § 7.28 electronically, per class—$100.00.

(6) * * *

(i) For filing an affidavit under section 71 of the Act on paper, per class—$400.00.

(ii) For filing an affidavit under section 71 of the Act electronically, per class—$300.00.

* * * * *

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act electronically, per class—$250.00.

(7) * * *

(ii) Surcharge for filing an affidavit under section 71 of the Act during the grace period electronically, per class—$100.00.

(8) * * *

(ii) For correcting a deficiency in a section 71 affidavit filed electronically—$100.00.

* * * * *

Katherine Kelly Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–06186 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0526; FRL–10286–01–R9]

Air Quality Plans; California; Tehama County Air Pollution Control District; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a revision to the Tehama County Air Pollution Control District's (TCAPCD or ''District'') portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before April 25, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0526 at *https://www.regulations.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.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web,

cloud, or other file sharing system). For additional submission methods, 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 *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Manny Aquitania, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 972–3977; or by email to *aquitania.manny@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal, including the date it was adopted by the District and the date it was submitted to the EPA by the California Air Resources Board (CARB or ''the State''). The TCAPCD is the air pollution control agency for Tehama County in California.

TABLE 1—SUBMITTED RULE

District	Rule or regulation No.	Rule title	Adopted	Submitted [1]
Tehama County APCD	Rule 2:3C	New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas.	02/28/23	05/11/23

On November 11, 2023, the submittal for Rule 2:3C was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 2:3C in the California SIP.

C. What is the purpose of the submitted rule?

Rule 2:3C is intended to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review (NNSR) permit programs for major sources emitting nonattainment air pollutants and their precursors.

II. The EPA's Evaluation and Action

A. What is the background for this proposal?

The EPA's May 2012 designation of the Tuscan Buttes area of the TCAPCD as a nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS) [2] triggered the requirement for the District to develop and submit a NNSR program to the EPA for SIP approval. CAA section 172(b) and 40 CFR 51.1114. Because Tehama County is designated (in part) and classified as Marginal nonattainment for the 2008 ozone NAAQS, the District's NNSR program must satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas. See 40 CFR 51.1102. As Tehama County (partial, Tuscan Buttes area) is also designated and classified as Marginal nonattainment (Rural Transport) for the 2015 ozone NAAQS,[3] TCAPCD's NNSR program is also required to satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas for purposes of the 2015 ozone NAAQS. See 40 CFR 51.1302, 51.1314.[4]

Additional information regarding the District's ozone nonattainment status and attainment/nonattainment designations for other criteria pollutants is included in our Technical Support Document (TSD), which may be found in the docket for this rule.

B. How is the EPA evaluating the rule?

The EPA reviewed Rule 2:3C for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Marginal ozone nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal Area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); [5] and (5) SIP revisions as set forth in CAA section 110(l) [6] and 193.[7] Our review evaluated the submittal for compliance with the NNSR requirements applicable to Marginal ozone nonattainment areas, and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP

[1] The submittal was transmitted to the EPA via a letter from CARB dated May 10, 2023. On December 5, 2023, CARB submitted a corrected version of Rule 2:3C, as the copy of the clean version of the rule that had been included in the May 11, 2023 SIP submittal did not include its adoption date and also contained an additional formatting error, and thus did not reflect the final rule that had been adopted on February 28, 2023.

[2] 77 FR 30088, 30109 (May 21, 2012); see 40 CFR 81.305.

[3] 83 FR 25776, 25791 (June 4, 2018); see 40 CFR 81.305.

[4] The EPA's determination that the Tuscan Buttes nonattainment area in Tehama County had attained the 2008 and 2015 ozone NAAQS by the applicable attainment dates suspended the requirements to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain but did not suspend the requirement to submit an NNSR program. See 81 FR 26697 (May 4, 2016); 87 FR 63698 (Oct. 20. 2022); 40 CFR 51.1118; 40 CFR 51.1318.

[5] CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

[6] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[7] CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the May 11, 2023, submittal of Rule 2:3C, we find that the TCAPCD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of this rule to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160–51.165, we have evaluated TCAPCD Rule 2:3C in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS. We find that Rule 2:3C satisfies these requirements as they apply to sources subject to the NNSR permit program requirements applicable to Marginal ozone nonattainment areas. We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 2:3C satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittal demonstrates in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under state law to carry out this proposed SIP revision. Our TSD contains a more detailed discussion of our analysis of Rule 2:3C.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of TCAPCD Rule 2:3C will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 2:3C will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

D. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the submitted rule because it fulfills all relevant requirements.

We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160–51.165 and 40 CFR 51.307. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of plan-in part).

In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

We will accept comments from the public on this proposal until April 25, 2024.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Rule 2:3C, ''New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas,'' adopted on February 28, 2023. Rule 2:3C is intended to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors under part D of title I of the CAA. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA

further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: March 15, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–06264 Filed 3–25–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA–HQ–OPPT–2023–0360; FRL–11164–01–OCSPP]

RIN 2070–AL15

Certain Existing Chemicals; Request To Submit Unpublished Health and Safety Data Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to require manufacturers (including importers) of 16 chemical substances to submit copies and lists of certain unpublished health and safety studies to EPA. Health and safety studies sought by this action will help inform EPA's responsibilities pursuant to TSCA, including prioritization, risk evaluation, and risk management.

DATES: Comments must be received on or before May 28, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0360, through *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 or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Lameka Smith, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1629; email address: *smith.lameka@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. Does this action apply to me?

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

- Chemical manufacturing (NAICS code 325);
- Petroleum refineries (NAICS code 324110); and
- Tire manufacturing (NAICS code 32621).

This action may also affect manufacturers of substances for commercial purposes that coincidentally produce the substance during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts and impurities. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

B. What action is the Agency taking?

EPA is proposing to require manufacturers of chemical substances listed in this document to submit copies and lists of certain unpublished health and safety studies to EPA. This proposed rule is intended to provide EPA with useful information for prioritization, risk evaluations, and risk management under TSCA section 6 regarding the chemical substances discussed below. This action lists the chemical substances and their Chemical Abstracts Service Registry Numbers (CASRNs) that would be added to 40 CFR 716. It also lists proposed specific data reporting requirements.

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

EPA promulgated the Health and Safety Data Reporting Rule that is codified at 40 CFR part 716 under TSCA section 8(d) (15 U.S.C. 2607(d)). EPA is proposing this rule under its authority in TSCA section 8(d) to require the submission of health and safety studies, and lists of studies, regarding certain chemical substances.

D. What are the estimated incremental impacts of this action?

EPA prepared an economic analysis of the impacts associated with the proposed addition of the 16 chemical substances to the TSCA section 8(d) Health and Safety Data Reporting rule, titled, ''TSCA Section 8(d): Economic Impact Analysis for Adding 16 Chemicals to the Health and Safety Data Reporting Rule'' (Ref. 1). This economic analysis is available in the docket and is summarized here.

EPA estimates that the costs of this action will be approximately $301,956 in the first year of reporting, with 3,388 estimated paperwork burden hours. In addition, EPA has determined that, of the 44 small businesses affected by this action, 1 is estimated to incur a maximum annualized cost impact of more than 1% of revenues. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities as further discussed in Unit IV.C.

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

1. *Submitting CBI. Do not submit CBI to EPA through https://www.regulations.gov or email. If you wish to include CBI in your comment, please follow the applicable instructions at https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be 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 and/or 40 CFR part 703, as applicable.

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.html.*

II. Background

A. What chemical substances is EPA proposing to add?

EPA is proposing the addition of 16 chemical substances to amend the list at 40 CFR 716.120. This list contains chemical substances for which the health and safety study data reporting is required. For this proposed rule, the 16 chemical substances will amend the current list and be added at 40 CFR 716.21(a)(11). If any special exemptions are required for a specific chemical substance, it will be identified in the table below under special exemptions. Special exemptions are reporting requirements that are specific to a chemical substance and would include specific language about specific studies and requirements. The chemical substances being added by this proposed rule are listed below:

- 4,4-Methylene bis(2-chloraniline) (CASRN 101–14–4);
- 4-tert-octylphenol(4-(1,1,3,3-Tetramethylbutyl)-phenol) (CASRN140–66–9);
- Acetaldehyde (CASRN75–07–0);
- Acrylonitrile (CASRN 107–13–1);
- Benzenamine (CASRN 62–53–3);
- Benzene (CASRN 71–43–2);
- Bisphenol A (CASRN 80–05–7);
- Ethylbenzene (CASRN 100–41–4);
- Naphthalene (CASRN 91–20–3);
- Vinyl Chloride (CASRN 75–01–4);
- Styrene (CASRN 100–42–5);
- Tribomomethane (Bromoform) (CASRN 75–25–2);
- Triglycidyl isocyanurate; (CASRN 2451–62–9);
- Hydrogen fluoride (CARN 7664–39–3);
- N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD) (CASRN 793–24–8); and
- 2-anilino-5-[(4-methylpentan-2-yl) amino]cyclohexa-2,5-diene-1,4-dione (6PPD-quinone) (CASRN 2754428–18–5).

B. What are the proposed reporting requirements?

The proposed reporting requirements for the 16 chemical substances listed in Unit II.A. include the following, with the specific types of health and safety studies listed in Unit II.D.:

- Manufacturers who, in the 10 years preceding the date a chemical substance is listed, either have proposed to manufacture or have manufactured any of the listed chemical substances must submit to EPA, during the 60-day reporting period specified in 40 CFR 716.65 and according to the reporting schedule set forth at 40 CFR 716.60, would be required to submit a copy of each specified type of health and safety study which is in their possession at the time the chemical substance is listed in 40 CFR part 716.
- Manufacturers who, either at the time of or after the chemical substance is listed in part 716, propose to manufacture or are manufacturing the listed chemical substance would be required to submit to EPA during the 60-day reporting period specified in 40 CFR 716.65 and according to the reporting schedule set forth at 40 CFR 716.60:

—A copy of each specified type of health and safety study which is in their possession at the time the chemical substance is listed;
—A list of the specified types of health and safety studies known to them but not in their possession at the time the chemical substance is listed;
—A list of the specified types of health and safety studies that are ongoing at the time the chemical substance is listed and are being conducted by or for them;
—A list of the specified types of health and safety studies that are initiated after the date the chemical substance is listed and will be conducted by or for them; and
—A copy of each specified type of health and safety study that was previously listed as ongoing or subsequently initiated (*i.e.,* listed in accordance with reporting requirements in Unit II.D., respectively) and is now complete regardless of completion date.

The proposed reporting would be required 90 days after date the final rule is issued from those who manufacture or proposes to manufacture the listed chemical substance from [*to be determined 30 days after date of publication of the final rule*] to [*to be determined as 90 days after date of publication of the final rule*] must inform EPA (by submitting a list) of any studies initiated during the period from [*to be determined as 30 days after date of publication of the final rule*] to [*to be determined as 90 days after date of publication of the final rule*] within 30 days of their initiation, but in no case later than [*to be determined as 120 days after date of publication of the final rule*].

The proposed reporting described in Unit II.D. would be required 90 days after the final rule is issued from those who manufactures or proposes to manufacture the listed chemical substance from [*to be determined as 30 days after date of publication of the final rule*] to [*to be determined as 90 days after date of publication of the final rule*] must inform EPA (by submitting a list) of any studies initiated during the period from [*to be determined as 30 days after date of publication of the final rule*] to [*to be determined as 90 days after date of publication of the final rule*] within 30 days of their initiation, but in no case later than [*to be determined as 120 days after date of publication of the final rule*].

In addition, if any such person has submitted lists of studies that were ongoing or initiated during the period from [*to be determined as 30 days after date of publication of the final rule*] to [*to be determined as 90 days after date of publication of the final rule*] to EPA, such person must submit a copy of each study within 30 days after its completion, regardless of the study's completion date. See 40 CFR 716.60 and 716.65.

C. What are the exemptions under this proposed rule?

Detailed guidance for reporting unpublished health and safety data is provided at 40 CFR part 716. Also found at 40 CFR 716.20 are explanations of reporting exemptions. EPA is proposing that the exemption listed at 40 CFR 716.20(a)(9), for persons manufacturing a substance only as an impurity, would not be available for the substances subject to this proposed rule. An impurity is defined as a chemical substance that is unintentionally present with another chemical substance. Impurities are not manufactured for distribution in commerce as chemical substances and have no commercial purpose separate from the chemical substance or mixture of which they are a part. Rulemaking proceedings that add chemical substances and mixtures to 40 CFR 716.120 will specify the types of health and safety studies that must be reported and will specify chemical grade/purity that must be met or exceeded in individual studies. Pursuant to the rulemaking procedure that requires EPA to identify the chemical/grade purity, EPA is requiring reporting on any purity level of the chemical.

EPA is proposing to require submissions of health and safety studies from companies manufacturing the identified chemical substances, including when a company is importing the chemical substance as a pure substance, mixture, formulated product, or article contains the subject chemical substance. Reporting would be required where the chemical substance is included as an impurity. EPA considers conditions of use associated with circumstances where a chemical substance subject to a risk evaluation even where the chemical substance is an impurity. To such ends, health and safety information associated with the conditions of use, whether as a pure chemical, part of a mixture or article, or as an impurity helps inform such risk evaluation. Accordingly, the chemicals included in today's action are of particular interest to EPA because they are either in the process of prioritization as candidates for high-priority designation or are expected to be candidates in the upcoming years. For those found to be of high priority, EPA is required to immediately conduct a risk evaluation. Collecting health and safety studies on the chemicals identified by this proposal will assist EPA in selecting chemicals to designate as high-priority chemicals as well as conduct risk evaluation on such designated chemicals.

D. What types of studies must be submitted?

Pursuant to 40 CFR 716.10 and 716.50, manufacturers are required to submit the following types of information:

- Lists and copies of unpublished health and safety studies for all substances specified in this rule on health effects, such as toxicity studies (*e.g.,* in vivo, in vitro) on carcinogenicity, reproductive and developmental effects, genotoxicity, neurotoxicity, immunotoxicity, endocrine effects, and other systemic toxicity and toxicokinetic (absorption, distribution, metabolism, or elimination), including modeling studies, in humans or animals.
- All unpublished studies on environmental effects and physical-chemical properties if performed as described in 40 CFR 716.50.
- All unpublished studies on occupational, general population, consumer, and environmental exposure, such as: unpublished studies on inhalation and dermal exposure, human biomonitoring, environmental monitoring of indoor and outdoor air, soil, water, and household dust, chamber emission rates from products or polymeric matrices, and unpublished modeling studies that estimate environmental concentrations or human exposures.
- Studies showing any measurable content of the tested substance (single substance or mixture). The composition and purity of test substances must be reported if included as part of the study.
- Studies previously submitted to EPA pursuant to a requirement under TSCA or of the submitter's own accord and studies conducted or to be conducted pursuant to a TSCA section 4 action are exempt from the submission of lists of health and safety studies required under 40 CFR 716.35 and the submission of studies required under this rule.
- Surveys, tests, and studies of biological, photochemical, and chemical degradation. Chemical identities are part of the submitted health and safety studies or data and must be submitted to EPA. Information from health and safety studies and/or data is not protected from disclosure, except to the extent such studies or information reveal information ''that discloses processes used in the manufacturing or processing of a chemical substance. Or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture,'' 15 U.S.C. 2613(2)(B). Additional information, listed in the rule's definition of health and safety study, are not part of a health and safety study (*e.g.,* names of laboratory personnel). Submitters asserting a CBI claim for information are required to submit a sanitized copy, removing only the information that is claimed as CBI.

E. How to report?

All submitters would be required to report TSCA section 8(d) data electronically, using the CSPP: Submissions for Chemical Safety and Pesticide Programs software (CSPP Software) accessible via EPA's Central Data Exchange (CDX) system available at *https://cdx.epa.gov/.* The CSPP Software provides a TSCA 8(d) Health and Safety Data Reporting application that a registered CDX user will access to submit TSCA section 8(d) records. Information on how to submit TSCA section 8(d) data is available in the docket (EPA–HQ–OPPT–2023–0360) and via EPA's TSCA section 8(d) web page for this action at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/section-8d-health-safety-data-reporting-user-guide-0.* Submitters may also contact EPA's TSCA Hotline at *tsca-hotline@epa.gov* or 202–554–1404. For help with accessing your CDX account, please contact the CDX help desk at *https://cdx.epa.gov/contact* or (888) 890–1995 (for international callers: (970) 494–5500).

1. *Submitting confidential business information. Any person submitting copies of records may assert a business confidentiality claim covering all or part of the submitted information in accordance with the procedures described in 40 CFR part 703 (88 FR 37155, June 7, 2023 (FRL–8223–02–OCSPP)). Requirements for asserting and maintaining confidentiality claims are described in 40 CFR 703.5. Such claim must be made concurrent with submission of the information. If no such claim accompanies the submission, EPA will not recognize a confidentiality claim, and the information in that submission may be made available to the public without further notice. Confidentiality claims must be substantiated at the time of submission to EPA pursuant to the requirements of 40 CFR 703.5(b). To assert a claim of confidentiality for information contained in a submitted record, the respondent must submit two copies of the document. One copy must be complete. In that copy, the respondent must indicate what information, if any, is claimed as confidential by marking the specific information on each page with a label such as ''confidential'', ''proprietary'', or ''CBI.'' The other copy must be a public version of the submission and attachments, with all information that is claimed as confidential removed (40 CFR 703.5(c)). Both the copy containing information claimed as CBI and the ''sanitized'' copy must be submitted electronically. The TSCA section 8(d) Health and Safety Data Reporting application incorporates many of the requirements for asserting CBI claims, including substantiation questions, a required certification statement, and prompts to provide a sanitized copy. Further details regarding the requirements for confidentiality claims can be found in 40 CFR part 703.*

2. *Submitting harmonized templates. Additionally, EPA finalized the requirement for submitting all existing information concerning health and environmental effects in the format of Organization of Economic Cooperation and Development's (OECD) harmonized templates, where such templates exist for the type of data (codified at 40 CFR 705.15(f)). OECD templates are accessible to the public online at https://oecd.org/ehs/templates/harmonised-templates.htm.* This can be accomplished by using the freely available IUCLID6 software by exporting the dossier in the OECD Harmonized

Template working context. EPA can accept any dossiers generated using any version of IUCLID6 available at *https://www.epa.gov/tsca-cbi/final-rule-requirements-confidential-business-information-claims-under-tsca#Implementation.* EPA believes that some of the data will already be available as an OECD template if the company had already submitted the studies under the European Union's Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation. In addition to the required template format, those subject to this rulemaking must submit any associated full study reports or underlying data as support documents. The full study reports and support documents are necessary for EPA to understand the full context and evaluate the quality of the data, which is necessary for the Agency to review to determine whether such data may be used for any future Agency actions. If an OECD-harmonized template is not available for a particular endpoint for which the manufacturer has relevant information, then the manufacturer must still submit the data. Such information may include, but is not limited to, raw monitoring data (regardless of having been aggregated or analyzed) of human or environmental exposure assessments and toxicity tests for either human health effects or ecological other environmental effects.

F. What is the rationale for adding the 16 chemical substances?

EPA assessment of chemical substances under TSCA section 6 involves a three-stage process: (1) prioritization, (2) risk evaluation, and, as applicable, (3) risk management. Prioritization and risk evaluation are carried out in accordance with procedural regulations at 40 CFR part 702, subparts A and B, respectively.

During prioritization, EPA identifies chemical substances that are candidates for prioritization and then uses reasonably available information to screen each candidate chemical substance against certain criteria and considerations specified in TSCA section 6(b)(1)(A):

- The hazard and exposure potential of the chemical substance;
- Persistence and bioaccumulation of the chemical substance;
- Potentially exposed or susceptible subpopulations;
- Storage near significant sources of drinking water;
- The conditions of use or significant changes in the conditions of use of the chemical substance (Conditions of use is defined under TSCA section 3(4) to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of.'');
- The volume or significant changes in the volume of the chemical substance manufactured or processed; and
- Other risk-based criteria that EPA determines to be relevant to the designation of the chemical substance's priority.

EPA identified 15 chemical substances that are the subject of this proposal as potential candidates for prioritization based on a screening process that is based on a combination of hazard, exposure (including uses), and persistence and bioaccumulation characteristics. To support the prioritization process as well as to inform its risk evaluation findings on any of these substances that EPA might designate as a high-priority substance, EPA is seeking unpublished health and safety studies on these chemical substances to ensure that such studies are available to EPA to inform any activities undertaken pursuant to TSCA section 6. EPA is also including the 6PPD transformation product, 2-anilino-5-[(4-methylpentan-2-yl) amino]cyclohexa-2,5-diene-1,4-dione (6PPD-quinone) (CASRN: 2754428–18–5) due to a response to a recent citizen's petition filed under TSCA section 21 received on 6PPD and 6PPD-quinone. Cited in the petition are the potential impacts of 6PPD-quinone to aquatic organisms and on population levels for some fish, such as the coho salmon. The Agency is including this chemical in this proposed request for unpublished health and safety studies to address data needs and to better understand and characterize risks associated with this chemical. For details on 6PPD and 6PPD-quinone and EPA's current key actions to address this chemical, please visit, *https://www.epa.gov/chemical-research/6ppd-quinone.*

Information received pursuant to the final rule will help inform other EPA activities involving such chemical substances. Additionally, non-CBI information collected pursuant to the final rule would be made public via ChemView.

Estimated benefits of the final rule include addressing market failure stemming from incomplete or imperfect information regarding the hazards associated with the listed chemicals. This final rule addresses market failure by making information about the health and safety effects of the listed chemicals available to EPA. By making this information available, EPA will be able to base decisions on actual data rather than relying on assumptions. Additionally, the information provided by this rule can aid in addressing negative externalities that occur when the costs associated with known hazards are external to manufacturers' decision-making and may result in overuse and/or overproduction of certain harmful products.

III. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA. For more information about these references, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Section 8(d): Economic Impact Analysis for the Addition of Sixteen Chemicals to the Health and Reporting Data Rule (March 2024).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0224 (EPA ICR No. 2703.01). This action requires the reporting of health and safety data to EPA by manufacturers of certain chemical substances to be added to the Health and Safety Data Reporting Rule. EPA intends to use information collected under the rule to assist in chemical assessments under TSCA, and to inform any additional work necessary under environmental protection mandates beyond TSCA. Submitters may designate information as confidential, trade secret, or proprietary. EPA has implemented procedures to protect any confidential, trade secret or proprietary information from disclosure. These procedures comply with TSCA

section 14 and EPA's confidentiality regulation, 40 CFR part 2, subpart B. This action requires the reporting of health and safety data to EPA by manufacturers of certain chemical substances to be added to the Health and Safety Data Reporting Rule. EPA intends to use information collected under the rule to assist in chemical assessments under TSCA, and to inform any additional work necessary under environmental protection mandates beyond TSCA. Submitters may designate information as confidential, trade secret, or proprietary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Consistent with the PRA, EPA is interested in comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden or improving the automated collection techniques for submitting health and safety data to the Agency.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are manufacturers of 16 chemicals to be added to the Health and Safety Data Reporting Rule. The Agency has determined that 44 out of 161 of the firms in the affected universe are small entities. Of those small firms, 13 may experience an impact of above 1% and 3 may have impacts above 3%. Details of this analysis are presented in the Economic Analysis of this rule (Ref. 1), which can be found in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Orders 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It does not have substantial direct effects on tribal government because this action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045.

Since this is not a ''covered regulatory action,'' E.O. 13045 does not apply. However, the Policy on Children's Health does apply. Although this action does not concern an environmental health or safety risk, the information obtained from the reporting required by this rule will be used to inform the Agency's decision-making process regarding chemical substances to which children may be exposed. This information will also assist the Agency and others in determining whether the chemical substances included in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that this type of action does not directly impact human health or environmental conditions. Although this action does not directly impact human health or environmental conditions, EPA identifies and addresses environmental justice concerns in accordance with Executive Orders 12898 (59 FR 7629, February 16, 1994) and 14096 (88 FR 25251, April 26, 2023) by requiring reporting of unpublished health and safety data. This regulatory action requires the submission of unpublished health and safety data for 16 chemical substances that will result in more information being collected and provided to the public. All consumers of products made from these chemicals could benefit from data regarding the chemicals' health and environmental effects. By requiring reporting of these unpublished studies, EPA provides communities across the U.S. (including communities with environmental justice concerns) with access to these studies. This information can also be used by government agencies and others in determining the potential hazards and risks associated with the listed chemicals. Therefore, the informational benefits of the action will have a positive impact on the human health and environmental impacts on communities with environmental justice concerns.

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 20, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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

PART 716—HEALTH AND SAFETY DATA REPORTING

■ 1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

■ 2. Amend § 716.21 by adding paragraph (a)(11) to read as follows:

§ 716.21 Chemical specific reporting requirements.

(a) * * *

(11) For 4,4-Methylene bis(2-chloraniline) (101–14–4); 4-tert-octylphenol(4-(1,1,3,3-Tetramethylbutyl)-phenol) (140–66–9); Acetaldehyde (75–07–7); Acrylonitrile (107–13–1); Benzenamine (62–53–3); Benzene (71–43–2); Bisphenol A (80–5–7); Ethylbenzene (100–41–4); Naphthalene (91–20–3); Vinyl Chloride (75–01–4); Styrene (100–42–5); Tribomomethane (Bromoform) (75–25–2); Triglycidyl isocyanurate (2451–62–9); Hydrogen fluoride (7664–39–3); N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD) (793–24–8); and 2-anilino-5-[(4-methylpentan-2-yl)amino]cyclohexa-2,5-diene-1,4-dione (6PPD-quinone) (2754428–18–5), all unpublished studies on health effects (including toxicity studies (in vivo and in vitro) on carcinogenicity, reproductive and developmental effects, genotoxicity, neurotoxicity, immunotoxicity, endocrine effects, and other systemic toxicity); toxicokinetics (absorption, distribution, metabolism, or elimination), including modelling studies, in humans or animals; environmental effects; environmental fate; physical-chemical properties if performed as described in 40 CFR 716.50; and occupational (both users and non-users), general population, consumer, bystander, and environmental exposure must be submitted. Studies showing any measurable content of the substance in the tested substance (single substances or mixture) must be reported. The composition and purity of test substances must be reported if included as part of the study. Studies previously submitted to EPA pursuant to a requirement under TSCA or of the submitter's own accord and studies conducted or to be conducted pursuant to a TSCA section 4 action are exempt from the submission of lists of health and safety studies required under 40 CFR 716.35 and the submission of studies required under this rule.

* * * * *

■ 3. Amend § 716.120 by adding alphabetically in the table under paragraph (d) entries for –''4,4-Methylene bis(2-chloraniline);'' ''4-tert-octylphenol(4-(1,1,3,3-Tetramethylbutyl)-phenol);'' ''Acetaldehyde;'' ''Acrylonitrile;'' ''Benzenamine;'' ''Benzene;'' ''Bisphenol A;'' ''Ethylbenzene;'' ''Naphthalene;'' ''Vinyl Chloride;'' ''Styrene;'' ''Tribomomethane (Bromoform);'' ''Triglycidyl isocyanurate;'' ''Hydrogen fluoride;'' and ''N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD);'' and '' 2-anilino-5-[(4-methylpentan-2-yl)amino]cyclohexa-2,5-diene-1,4-dione (6PPD-quinone)'' to read as follows:

§ 716.120 Substance and listed mixtures to which this subpart applies.

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
4,4-Methylene bis(2-chloraniline)	101–14–4	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
4-tert-octylphenol(4-(1,1,3,3-Tetramethylbutyl)-phenol).	140–66–9	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Acetaldehyde	75–07–0	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Acrylonitrile	107–13–1	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Benzenamine	62–53–3	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Benzene	71–43–2	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Bisphenol A	80–05–7	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Ethylbenzene	100–41–4	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Naphthalene	91–20–3	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Vinyl Chloride	75–01–4	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Styrene	100–42–5	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Tribomomethane (Bromoform)	75–25–2	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
Triglycidyl isocyanurate	2451–62–9	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].

Category	CAS No.	Special exemptions	Effective date	Sunset date
Hydrogen fluoride	7664–39–3	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
N-(1,3-Dimethylbutyl)-N′-phenyl-p-phenylenediamine (6PPD).	793–24–8	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].
2-anilino-5-[(4-methylpentan-2-yl) amino]cyclohexa-2,5-diene-1,4-dione (6PPD-quinone).	2754428–18–5	§ 716.21(a)(11) applies; § 716.20(a)(9) does not apply.	[TBD 30 DAYS AFTER DATE OF FINAL RULE].	[TBD 90 DAYS AFTER DATE OF FINAL RULE].

[FR Doc. 2024–06303 Filed 3–25–24; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 247, and 252

[Docket DARS–2024–0007]

RIN 0750–AL12

Defense Federal Acquisition Regulation Supplement: Modification of Notification of Intent To Transport Supplies by Sea (DFARS Case 2020–D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a DFARS solicitation provision and modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 28, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2020–D026, using either of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for DFARS Case 2020–D026. Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2020–D026'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2020–D026 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal 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: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to remove the solicitation provision at DFARS 252.247–7022, Representation of Extent of Transportation By Sea, and to revise the contract clause at DFARS 252.247–7023, Transportation of Supplies by Sea, accordingly, to effect the purpose of the provision using only the clause. This change will streamline instructions to contractors regarding required notifications to the Government of transportation of supplies by sea.

II. Discussion and Analysis

Currently, DFARS provision 252.247–7022 and DFARS clause 252.247–7023 are included in all solicitations with an anticipated value greater than the simplified acquisition threshold, except solicitations for direct purchase of ocean transportation services. The provision requires the offeror to represent whether supplies will or will not be transported by sea in performance of the contract or any subcontract. The clause notifies offerors of their responsibilities when transporting supplies by sea, which include the use of U.S. flag vessels, unless certain situations apply; the submission of a certification with a final invoice; and submission of bills of lading to the contracting officer and to the U.S. Department of Transportation Maritime Administration (MARAD).

The provision's notification requirement was intended to aid acquisition personnel in carrying out their responsibilities under the clause. By effecting the notification via a solicitation provision, a representation is required from all offerors rather than just the awardee. Given the offeror's representation has no bearing on its eligibility or selection for award, the notification is better suited to be a requirement in the clause, where only the awardee must notify the contracting officer, as well as MARAD, only if transportation of supplies by sea will occur. Including MARAD on the notification provides all impacted parties with situational awareness and an ability to be proactive in ensuring compliance with the clause requirements.

Given that DFARS clause 252.247–7023 is included in nearly all contracts, and DFARS provision 252.247–7022 is associated with the requirements of 252.247–7023, the text of the clause and provision can be combined. The result reduces the number of provisions required to be used in solicitations and the number of representations offerors must provide, while still maintaining the effect of DFARS provision 252.247–7022.

Consequent to removing DFARS clause 252.247–7022, this rule removes the clause prescription at DFARS 247.574(a) as well as direction at DFARS 204.1202 and 212.301 relating to the provision.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This rule removes the provision at DFARS 252.247–7022, along with its prescription at DFARS 247.574(a), and amends the clause at DFARS 252.247–7032 accordingly to include the substance of the provision. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This change is expected to streamline instructions to contractors regarding notifications of transportation of supplies by sea. Presently, DFARS

provision 252.247–7022 is included in nearly all solicitations and DFARS clause 252.247–7023 is included in nearly all contracts. By effectively combining the provision and the clause, this proposed rule will reduce the number of provisions required to be used in solicitations and the number of representations offerors must provide, while still maintaining the effect of DFARS provision 252.247–7022. Therefore, this proposed rule is expected to reduce administrative burden on contractors, including small businesses.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not create any new requirements or add to any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a solicitation provision and accordingly to modify the text of an existing DFARS contract clause to include the operative text of that DFARS provision.

The objective of this proposed rule is to streamline the instructions to contractors pertaining to the transportation of supplies by sea. The legal basis for the proposed rule is 41 U.S.C. 1303.

This proposed rule will likely affect small entities that will be awarded contract actions that include DFARS clause 252.247–7023, Transportation of Supplies by Sea. Data was obtained from the Procurement Business Intelligence Service for all contracts and modifications that include DFARS clause 252.247–7023 for fiscal years 2020 through 2022. DoD awarded on average 642,310 contract actions per year that included DFARS clause 252.247–7023 to 30,680 unique entities, of which approximately 359,315 contract awards (56 percent) were made to 21,070 unique small entities (69 percent).

The proposed rule does not impose any new reporting, recordkeeping, or compliance requirements.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives that would accomplish the objectives of the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD 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 (DFARS Case 2020–D026), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0245, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 204, 212, 247, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 247, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 204, 212, 247, and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.1202 [Amended]

■ 2. Amend section 204.1202 by removing paragraph (2)(xv).

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 3. Amend section 212.301 by revising paragraph (f)(xxi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xxi) *Part 247—Transportation.*

(A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of Public Law 110–417.

(B) Use the basic or one of the alternates of the clause at 252.247–7023, Transportation of Supplies by Sea, as prescribed in 247.574(a), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(*1*) Use the basic clause as prescribed in 247.574(a)(1).

(*2*) Use the alternate I clause as prescribed in 247.574(a)(2).

(*3*) Use the alternate II clause as prescribed in 247.574(a)(3).

(C) Use the clause 252.247–7025, Reflagging or Repair Work, as prescribed in 247.574(b), to comply with 10 U.S.C. 2631(b).

(D) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(c), to comply with section 1017 of Public Law 109–364.

(E) Use the clause at 252.247–7027, Riding Gang Member Requirements, as prescribed in 247.574(d), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

(F) Use the clause at 252.247–7028, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

PART 247—TRANSPORTATION

247.574 [Amended]

■ 4. Amend section 247.574—

■ a. By removing paragraph (a);

■ b. By redesignating paragraphs (b) through (e) as paragraphs (a) through (d);

■ c. In newly redesignated paragraph (a) introductory text, by removing ''all''; and

■ d. In newly redesignated paragraph (d), by removing ''under chapter 121 of title 46 U.S.C.'' and adding ''46 U.S.C. chapter 121.'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7007 [Amended]

■ 5. Amend section 252.204–7007 by—
■ a. Removing the provision date of ''NOV 2023'' and adding ''DATE'' in its place; and
■ b. Removing paragraph (d)(1)(viii).

252.247–7022 [Removed and Reserved]

■ 6. Remove and reserve section 252.247–7022.
■ 7. Amend section 252.247–7023—
■ a. By revising the introductory text and the clause date;
■ b. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
■ c. By adding a new paragraph (b);
■ d. In the newly redesignated paragraph (e)(2) by removing ''Required shipping date'' and adding ''Required shipping date(s) and required delivery date(s)'' in its place;
■ e. By revising the newly redesignated paragraph (f) introductory text;
■ f. By revising the newly redesignated paragraph (i);
■ g. In the newly redesignated paragraph (j) introductory text by removing ''(b)(2)'' and adding ''(c)(2)'' in its place;
■ h. In the newly redesignated paragraph (j)(1) by removing ''paragraph (i)'' and adding ''paragraph (j)'' in its place; and
■ i. In the newly redesignated paragraph (j)(2) by removing ''paragraphs (a) through (e)'' and ''paragraph (i)'' and adding ''paragraphs (a) through (f)'' and ''paragraph (j)'' in their places, respectively.
■ j. In Alternate I—
■ i. By revising the introductory text and the clause date;
■ ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
■ iii. By adding a new paragraph (b);
■ iv. In the newly redesignated paragraph (e)(2) by removing ''Required shipping date'' and adding ''Required shipping date(s) and required delivery date(s)'' in its place;
■ v. By revising the newly redesignated paragraph (f) introductory text;
■ vi. By revising the newly redesignated paragraph (i);
■ vii. In the newly redesignated paragraph (j) introductory text by removing ''(b)(2)'' and adding ''(c)(2)'' in its place;
■ viii. In the newly redesignated paragraph (j)(1) by removing ''paragraph (i)'' and adding ''paragraph (j)'' in its place;
■ ix. In the newly redesignated paragraph (j)(2) by removing ''paragraphs (a) through (e)'' and ''paragraph (i)'' and adding ''paragraphs (a) through (f)'' and ''paragraph (j) in their places, respectively; and
■ x. By adding ''(End of clause)'' after newly redesignated paragraph (j)(2).
■ k. In Alternate II—
■ i. By revising the introductory text and the clause date;
■ ii. By redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
■ iii. By adding a new paragraph (b);
■ iv. In the newly redesignated paragraph (e)(2) by removing ''Required shipping date'' and adding ''Required shipping date(s) and required delivery date(s)'' in its place;
■ v. By revising the newly redesignated paragraph (f) introductory text;
■ vi. By revising the newly redesignated paragraph (i);
■ vii. In the newly redesignated paragraph (j) introductory text by removing ''(b)(2)'' and adding ''(c)(2)'' in its place;
■ viii. In the newly redesignated paragraph (j)(1) by removing ''paragraph (i)'' and adding ''paragraph (j)'' in its place;
■ ix. In the newly redesignated paragraph (j)(2) by removing ''paragraphs (a) through (e)'' and ''paragraph (i)'' and adding ''paragraphs (a) through (f)'' and ''paragraph (j)'' in their places, respectively; and
■ x. By adding ''(End of clause)'' after newly redesignated paragraph (j)(2).

The revisions and additions read as follows:

252.247–7023 Transportation of Supplies by Sea.

Basic. As prescribed in 247.574(a) and (a)(1), use the following clause:

Transportation of Supplies by Sea—Basic (Date)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov,* Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate I. As prescribed in 247.574(a) and (a)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

Transportation of Supplies by Sea—Alternate I (Date)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov,* Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate II. As prescribed in 247.574(a) and (a)(3), use the following clause, which uses a different paragraph (c) than the basic clause:

Transportation of Supplies by Sea—Alternate II (date)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov,* Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award, and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

■ 8. Amend section 252.247–7025—

■ a. By revising the section heading; and

■ b. In the introductory text by removing ''247.574(c)'' and adding ''247.574(b)'' in its place.

The revision reads as follows:

252.247–7025 Reflagging or Repair Work.

* * * * *

252.247–7026 [Amended]

■ 9. Amend section 252.247–7026 introductory text by removing ''247.574(d)'' and adding ''247.574(c)'' in its place.

■ 10. Amend section 252.247–7027—

■ a. By revising the section heading; and

■ b. In the introductory text by removing ''247.574(e)'' and adding ''247.574(d)'' in its place.

The revision reads as follows:

252.247–7027 Riding Gang Member Requirements.

* * * * *

[FR Doc. 2024–06004 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0092; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BF43

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Pyramid Pigtoe

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the September 7, 2021, proposed rule to list the pyramid pigtoe (*Pleurobema rubrum*), a freshwater mussel, as a threatened species under the Endangered Species Act of 1973 (Act), as amended. This withdrawal is based on new information we received following publication of the proposed rule that indicates the pyramid pigtoe is not a valid listable entity under the Act. In 2023, a comprehensive genetic analysis throughout the range of the pyramid pigtoe (*P. rubrum*) and round pigtoe (*P. sintoxia*) mussels concluded that the two mussels are conspecific and that pyramid pigtoe is not a valid taxon. Individuals previously assigned to *P. rubrum* are now considered to be *P. sintoxia,* a wide-ranging common species. Because we are withdrawing the proposal to list the pyramid pigtoe, we are also withdrawing the associated proposed rule issued under section 4(d) of the Act.

DATES: The proposed rule that published on September 7, 2021 (86 FR 49989), to list the pyramid pigtoe as a threatened species with a rule issued under section 4(d) of the Act, is withdrawn on March 26, 2024.

ADDRESSES: This withdrawal, comments on our September 7, 2021, proposed rule, and supplementary documents are available for public inspection on the internet at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2021–0092, and some of these documents are also available on the Service's website at *https://ecos.fws.gov/ecp/species/2781*.

FOR FURTHER INFORMATION CONTACT: Janet Mizzi, Field Supervisor, U.S. Fish and Wildlife Service, Asheville Ecological Services Field Office, 160 Zillicoa St., Asheville, NC 28801; telephone 828–258–3939. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Please refer to our September 7, 2021, proposed rule (86 FR 49989) for a detailed description of previous Federal actions concerning the pyramid pigtoe. We accepted submission of new information and comments on our September 7, 2021, proposed rule for 60 days, ending November 8, 2021.

Finding

Consistent with section 4(b)(6)(A)(i)(IV) of the Act, we are notifying the public that we are withdrawing the September 7, 2021, proposed rule to list the pyramid pigtoe as a threatened species with an associated rule issued under section 4(d) of the Act (''4(d) rule'') (86 FR 49989). The basis for this action is described below.

Background

It is our intent in this withdrawal to discuss the new information identifying the pyramid pigtoe and round pigtoe as conspecific (belonging to the same species) that serves as the basis for our decision. A thorough review of the life history, ecology, and overall viability of what was considered pyramid pigtoe at the time the September 7, 2021, proposed rule was published is found in the species status assessment report (SSA report) (version 1.0; Service 2021, pp. 19–36).

Taxonomy

Species identification of pyramid pigtoe and round pigtoe, as well as between other related taxa, is challenging due to morphological similarity and phenotypic plasticity. It is further exacerbated by the fact that many species are sympatric (overlapping in geographical distribution) (Olivera-Hyde et al. 2023, pp. 2–5). Recent genetic studies led researchers to suggest that the pyramid pigtoe and the round pigtoe may be conspecific (Inoue et al. 2018, p. 694; Olivera-Hyde et al. 2023, pp. 8–14), although species experts continued to support recognition of the pyramid pigtoe as a valid taxon due to morphological differences and a lack of comprehensive rangewide genetic information comparing the similar taxa (Olivera-Hyde et al. 2023, p. 15; Williams et al. 2017, p. 39). Because the pyramid pigtoe and round pigtoe are difficult to differentiate, there has been frequent misidentification by experts and lumping of the taxa together in the academic literature (Olivera-Hyde et al. 2023, pp. 2–5).

Both the SSA report for the pyramid pigtoe and the September 7, 2021, proposed rule to list the pyramid pigtoe as a threatened species (86 FR 49989) acknowledge the difficulty in identifying the pyramid pigtoe. After reviewing the best scientific information available at that time, we agreed with mussel experts and found that the pyramid pigtoe was a valid taxon (Service 2021, pp. 12–13; see also 86 FR 49989, September 7, 2021). Since that finding, however, a comprehensive, rangewide genetic analysis has been completed comparing pyramid pigtoe to round pigtoe, and this information now confirms that they are conspecific (Johnson et al., 2024, pp. 16–17).

Review of New Genetic Information

Prior genetic analyses relied on results taken from individuals from portions of species' ranges, resulting in conclusions that were limited to only those areas where individuals were collected (Inoue et al. 2018, p. 698; Olivera-Hyde et al. 2023, p. 3). The new study uses data collected from throughout the ranges of both pyramid pigtoe and round pigtoe populations (Johnson et al., 2024, entire). Genetic data were successfully sampled from 200 individuals for mitochondrial DNA (mtDNA) analysis, 106 individuals for nuclear DNA (nDNA) analysis, and 176 individuals for genotype-by-sequencing (GBS) analysis across 11 populations and 22 waterbodies (Johnson et al., 2024, p. 33). Mitochondrial DNA and nDNA were used in previous studies but were found to be problematic for supporting species delineations in *Pleurobema,* due to potential hybridization and backcrossing effects, resulting in a reliance on hard-to-distinguish morphological variation for species delineations (Olivera-Hyde et al. 2023, p. 14). The most recent analysis incorporated GBS methodologies to address uncertainty in assessing whether pyramid pigtoe is a valid taxon (Johnson et al., 2024, p. 6.).

The results of the study support the hypothesis that pyramid pigtoe and round pigtoe are conspecific based on mtDNA, nDNA, and GBS data (Johnson et al., 2024, pp. 13–17). The results of the GBS analysis cluster individuals based on geographic location and not by species identification based on morphology (Johnson et al., 2024, p. 16). This finding is also supported by the results of the mtDNA and nDNA analyses and is consistent with the results of prior published findings (Inoue et al. 2018, p. 694; Olivera-Hyde et al. 2023, pp. 8–14). The results do not support the current morphologically-based species delineations.

Summary of Justification for Withdrawal

New rangewide genetic information has become available since the publication of our September 7, 2021, proposed rule (86 FR 49989) to list the pyramid pigtoe as a threatened species with an associated section 4(d) rule under the Act. The new information is based on mtDNA, nDNA, and GBS data, and concludes that pyramid pigtoe and round pigtoe are conspecific. These results support the findings of previous studies that were too narrow in scope to make definitive conclusions of species delineation. The resulting single species (round pigtoe; *P. sintoxia*) is wide-ranging and common throughout its current range. Because pyramid pigtoe (*P. rubrum*) is no longer considered a valid species, we withdraw the September 7, 2021, proposed rule (86 FR 49989) to list pyramid pigtoe as a threatened species with an associated section 4(d) rule.

References Cited

A complete list of references cited in this document is available on the internet at *https://www.regulations.gov* and upon request from the Asheville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Asheville Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–06221 Filed 3–25–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2023–0151; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG53

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Pygmy Three-Toed Sloth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the pygmy three-toed sloth (*Bradypus pygmaeus;* hereafter ''pygmy sloth''), an arboreal mammal species from Panama, as a threatened species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the pygmy sloth. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the pygmy sloth as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it will add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species.

DATES: We will accept comments received or postmarked on or before May 28, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 10, 2024.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2023–0151, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2023–0151, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–HQ–ES–2023–0151.

FOR FURTHER INFORMATION CONTACT: Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171. 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. Please see Docket No. FWS–HQ–ES–2023–0151 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat destruction, modification, or curtailment; overutilization; disease; predation; the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) Information on regulations that may be necessary and advisable to provide for the conservation of the pygmy sloth and that we can consider in developing a 4(d) rule for the species. In particular, we seek information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act (16 U.S.C. 1533(b)(1)(A)) directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES.** We request that you send comments only by the methods described in **ADDRESSES.**

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate considering comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES.** Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT.** We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before

the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On November 15, 2013, we received a petition from the Animal Welfare Institute to add the pygmy sloth to the List of Endangered and Threatened Wildlife. On June 9, 2014, we published in the **Federal Register** (79 FR 32900) a 90-day finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted; that document initiated a status review for the pygmy sloth.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the pygmy sloth. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific review of the information contained in the pygmy sloth SSA report. We sent the SSA report to five independent peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.regulations.gov* at Docket No. FWS–HQ–ES–2023–0151. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed above in Peer Review, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions, including clarifications on terminology, additional literature on phylogeny and diet, information on generation time, clarifications on published correspondence, updates regarding the ongoing conservation efforts for the pygmy sloth, clarification on the pygmy sloth's inclusion in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), and other editorial suggestions. No substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.1 of the SSA report (Service 2023, entire).

I. Proposed Listing Determination

Background

The pygmy sloth, the smallest of the of four extant species of three-toed sloths, is a tan-colored arboreal mammal species with a near-white face and black stripes over the eyes. Adults weigh approximately 3 kilograms (kg) (6.6 pounds (lb)) and measure about 500 millimeters (mm) (1.6 feet (ft)) in length. The species is most closely related to the brown-throated three-toed sloth (*B. variegatus;* hereafter ''brown-throated sloth''; Ruiz-Garcia et al. 2020, pp. 468–470; Anderson and Handley 2001, pp. 9–15). The pygmy sloth was originally separated taxonomically from the more widespread brown-throated sloth (native to central America including mainland Panama and northern South America) based on its consistently smaller size and distinct skeletal structures (Anderson and Handley 2001, pp. 9–18). Having only been described as a full species in 2001, there is little detail available on the species' life history and habitat requirements.

Pygmy sloths are found only on the small Panamanian island Isla Escudo de Veraguas (hereafter, ''Escudo''), which is 4.3 square kilometers (km^2) (1.7 square miles (mi^2)) in area and lies about 18 kilometers (km) (11.2 miles (mi)) from the Panamanian mainland (Anderson and Handley 2001, p. 5). About 2.5 percent of the island is composed of red mangrove (*Rhizophora mangle*) thickets scattered along the north coast, and the remainder of the island is a mixed species tropical forest (Kaviar et al. 2012, pp. 1–3; Voirin 2015, p. 705; Zoological Society of London (ZSL) 2017, p. 11). It is uncertain whether sloths on Escudo are reliant on the mangroves or whether some live entirely within the interior forest (Voirin 2015, p. 705). All three-toed sloths are arboreal folivores; they consume leaves with relatively low nutritional quality, necessitating physiological and behavioral adaptations including limited movements and low muscle mass (Anderson and Handley 2001, p. 2). Pygmy sloths have been observed using at least 15 plant species (including mangroves) for food and refuge, but it is not known which, if any, plant species they require (Smith et al. 2021, unpaginated; Smith 2022, pers. comm.; Superina 2022, pers. comm.).

Few data exist specific to pygmy sloth reproduction and population biology. Based on demographic data for three-toed sloths, it is reasonable to conclude that an average generation time (or time between birth of an individual and birth of its offspring) is approximately 6 to 10 years for pygmy sloths (Anderson and Handley 2002, p. 1051; Taube et al. 2001, p. 184; Superina 2022, pers. comm.). Other three-toed sloth species have only one offspring per pregnancy after gestation of 100–180 days (Benirschke 2008, p. 168; Taube 2001, p. 184). Longevity and survivorship are little-known for three-toed sloths. Both genetic data, although limited, and documentation of sloth movement into the interior forest suggest that there is only a single population of the species (ZSL 2017, p. 9; Voirin 2015, p. 705; Silva 2013, p. 138).

A thorough review of the taxonomy, life history, and ecology of the pygmy sloth is presented in the SSA report (version 1.1; Service 2023, pp. 1–8).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, we issued a final rule that revised 50 CFR 17.31 and 17.71 (84 FR 44753; hereinafter, ''the 2019 4(d) rule'') and ended the ''blanket rule'' option for application of section 9 prohibitions to species newly listed as threatened after the effective date of those regulatory revisions (September 26, 2019). Blanket rules had extended the majority of the protections (all of the prohibitions that apply to endangered species under

section 9 and additional exceptions to the prohibitions) to threatened species, unless we issued an alternative rule under section 4(d) of the Act for a particular species (*i.e.,* a species-specific 4(d) rule). The blanket rule protections continued to apply to threatened species that were listed prior to September 26, 2019, without an associated species-specific rule. Under the 2019 4(d) rule, the only way to apply protections to a species newly listed as threatened is for us to issue a species-specific rule setting out the protective regulations that are appropriate for that species.

Our analysis for this decision applied the regulations that are currently in effect, which include the 2019 revisions. However, we proposed further revisions to these regulations on June 22, 2023 (88 FR 40742; 88 FR 40764). In case those revisions are finalized before we make a final status determination for this species, we have also undertaken an analysis of whether the decision would be different if we were to apply those proposed revisions. We concluded that the decision would have been the same if we had applied the proposed 2023 regulations. The analyses under both the regulations currently in effect and the regulations after incorporating the June 22, 2023, proposed revisions are included in our decision file.

The Act (16 U.S.C. 1531 *et seq.*) defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

We considered the threats of habitat loss and degradation and tourism and development, along with demographic factors of pygmy sloths, and determined the foreseeable future to be approximately 30 years. This timeline for the foreseeable future is based on several factors. The pygmy sloth generation time is estimated to be between 6 and 10 years, and similar species only have one offspring per pregnancy. Thus, the demographic responses of the species to the identified threats will materialize rapidly across just a few (<5) generations. This determination of foreseeable future being 30 years assumes enough time will pass for three to five generations of cohorts to represent the population's resiliency to the identified threats. Thirty years will also include time for climate change and development to progress, as well as for conservation activities affecting Escudo to develop. We are very confident in the predictions from our climate models out to this time step. Although there is uncertainty in specific rates and strengths of the impacts from development and tourism over this time step, we are confident in the negative effects these threats will have on pygmy sloth. We have information showing that nearby coastal development plans are in place, roads providing access to the coastlines are being built, and conservation capacity within the area is limited. This information combined with demographics of this species gives us confidence that within a 30-year future, these threats will negatively impact the pygmy sloth. Therefore, based on the best scientific and commercial data available, we conclude that over a period of 30 years we can make reliable predictions that both the future threats to the species and the species' response to those threats are likely.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed

for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess pygmy sloth viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in (or decrease with decreases in) resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–HQ–ES–2023–0151 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Based on the species' biology described above and in the SSA report (version 1.1; Service 2023, pp. 1–8), the pygmy sloth requires food plants, intact and connected forest habitats, and sufficient conspecific individuals to find a mate. Threats to the sloth's viability include the small extent (4.3 km^2) of Escudo (as noted above, pygmy sloths in the wild are found only on this one small island in Panama), the naturally limited size of the species' single population, direct and indirect impacts of tourism, habitat loss from small-scale timber harvest, and habitat loss from sea-level rise and erosion. Together, these threats make the pygmy sloth vulnerable to random declines due to demographic stochasticity, environmental catastrophes (*e.g.,* storms), or both.

Threats

Small-scale but continuing harvest of red mangroves and interior forest trees occurs on Escudo for construction of temporary huts used by fishermen and for timber for tourism development in nearby regions (Feller 2022, pers. comm.; ZSL 2017, p. 16). Continued forest loss would eventually lead to a reduced pygmy sloth population, but the lack of good information on pygmy sloth movements and densities, and their relative reliance on mangrove versus interior forest, currently prohibits determination of that threshold. Evidence from urban populations of related species indicates three-toed sloth species may be relatively resilient to life in small forest fragments (Service 2023, p. 6; Pool et al. 2016, pp. 26–30), but it is not clear whether this extends to the pygmy sloth.

As the nearby coastal regions of the Bocas del Toro, Veraguas, and Ngobe-Bugle provinces grow in popularity with local and especially foreign tourists, so too has the volume of visits to Escudo and the demand for infrastructure there (ZSL 2017, pp. 3, 17). Both Panamanians and foreign investors are interested in developing the island and nearby region for greater tourism commercialization (Smith 2021, pers. comm.; Voirin 2021, pers. comm; Voirin 2015, pp. 706–707). Although Panama has a mandatory environmental-impact-assessment process (Gonzalez 2008, pp. 320–327), reviews are sometimes diminished by demand for development (*e.g.,* Gonzalez 2008, pp. 328–333) and often initiated too late in a project's progression to revise plans or prevent identified environmental harms (Jordan 2021, pers. comm.). Consultations between government environmental authorities and developers can be rapid and leave little room for adjustment of project plans (Jordan 2021, pers. comm.).

Coastal development and construction of major roads and ports on the nearby mainland has improved and will continue to improve accessibility, making the trip to Escudo easier for many more people (Smith 2021, pers. comm.; Voirin 2021, pers. comm.; Oberle and Rodriguez 2020, entire; Bilbao 2017, unpaginated). While little is known of the impacts of increased human presence on the island to pygmy sloth behavior and ecology, increased tourism, particularly when combined with inadequate regulatory mechanisms and enforcement, is likely to lead to direct and indirect impacts on sloth viability through up-close encounters, deforestation, habitat degradation, increased litter and refuse, as well as the potential to increase the introduction of pests, invasive species, and disease.

Desire for up-close or in-hand photos of pygmy sloths will likely increase along with tourist visitation as global popularity of sloths and demand for pet and zoo-housed sloths has grown tremendously (Voirin 2015, p. 706). The risk of sloths being illegally taken and smuggled away from Escudo into domestic and international trade for personal and commercial purposes is greater as more unregulated visitors reach the island (Jordan 2021, pers. comm.; Voirin 2021, pers. comm.). This is despite three-toed sloths rarely surviving more than several months in captivity and a general lack of knowledge regarding husbandry techniques for three-toed sloths (Voirin et al. 2014a, p. 2; Espinoza and Cliffe 2013, p. 4; Raines 2005, p. 557).

While there is currently little legal international trade of the species, there are several examples of known trade or attempts to trade specimens of pygmy sloth. In 2013, 11 individuals were taken from the wild with the intent to export to the United States for zoological purposes, but the attempted export was stopped by protesters at the Bocas del Toro Airport (Espinoza and Cliffe 2013, p. 4). These individual pygmy sloths were soon after returned to Escudo, but at least two died after reintroduction to the island (Superina 2022, pers. comm.). Additionally, eight wild-sourced specimens of pygmy sloth originating from Panama were legally exported from the United States to Portugal for scientific purposes in 2015. In 2021, there was at least one trade transaction of a specimen from China to the Netherlands, but the involved specimen was recorded as a CITES pre-

Convention specimen, meaning the specimen was acquired (removed from the wild or born in a controlled environment) before the date the species was first included in the CITES Appendices (July 1, 1975), and therefore we presume it to be a non-living specimen.

In general, Escudo and its surroundings have very limited government presence or regulatory enforcement because of the remote location and Escudo's semi-autonomous nature as an Indigenous-inhabited territory that is administered by the Bocas del Toro province. While smaller scale, Indigenous-led pygmy sloth tourism has been less disruptive than the more industrial form (Voirin 2021, pers. comm.), the permit requirements for tourists to visit the island are not enforced (ZSL 2017, pp. 17–18). Small-scale tourist operations are also likely to be outcompeted by larger organizations entering the market. Although large-scale tourism has not yet reached Escudo as it has in the surrounding archipelago, tourism is steadily increasing and tourist boats arrive without notice and are reportedly damaging coral reefs and sea turtle nesting grounds (Smith 2021, pers. comm.), indicative of at least some operators' lack of concern for or knowledge about harm to the island's ecology.

Finally, as sea levels rise due to global climate change, the extent of the pygmy sloth's island habitats may be reduced (Intergovernmental Panel on Climate Change (IPCC) 2019, pp. 6–13). Any loss of habitat area on the already small island could reduce the number of sloths supported on Escudo. Anecdotally, erosion has been increasing on Escudo (Smith 2021, pers. comm.), although its extent is not quantified, and it is not known whether this is due to sea-level rise, storms, coastal deforestation, or other human-caused shoreline disturbance.

Conservation Efforts and Regulatory Mechanisms

The Pygmy Sloth Conservation Project, established in 2011 by ZSL's EDGE of Existence Program, is employing innovative and integrative activities to support pygmy sloth and Escudo conservation (ZSL 2017, entire). The project includes repeated population surveys, education of Indigenous communities and schoolchildren regarding Escudo ecology and the benefits of conservation, and cooperation with the Indigenous government and local fishermen's association to develop a community-based natural-resources-management program (ZSL 2017, pp. 19–27).

In June 2022, a workshop was held in collaboration with the Ministry of Environment and the Ngäbe-Buglé indigenous authorities to develop a management plan for the conservation of the pygmy sloth (Smith 2022, pers. comm.). The information generated by this pygmy sloth conservation action plan is expected to also serve as the basis for a future comprehensive management plan for Escudo, but as of the publication of this proposed rule, that plan has not yet been developed (Smith 2022, pers. comm.).

As of 2017, the national Ministry of the Environment could not afford to visit Escudo independently (ZSL 2017, p. 18). Consequently, there is no evidence available to the Service of enforcement of tourism permit requirements or anti-littering and deforestation laws. Escudo is designated as a protected area with management shared between the national Ministry of the Environment and the local Indigenous council (Voirin et al. 2014a, p. 5), but in 2012, the island was classified as open to tourism, as well as scientific, entertainment, and cultural development, so the benefits of the protected-area designation are limited (Voirin 2015, pp. 706–707).

Pygmy sloths are included in CITES Appendix II, and international trade in any specimen of the species requires *inter alia* a valid CITES document that authorizes trade in the specimen to accompany the specimen. CITES export permits may only be issued by the exporting country's CITES Management Authority after a legal acquisition finding is made by the exporting country's CITES Management Authority and a non-detriment finding is made by the exporting country's CITES Scientific Authority (for additional information about CITES requirements, see 50 CFR part 23). On May 5, 2023, CITES Notification No. 2023/057 notified all Parties to CITES that Panama has suspended the issuance of all exports for specimens harvested from the wild for commercial purposes, including the pygmy sloth, until scientific non-detriment findings are completed (CITES 2023, unpaginated).

Current Condition

We assess the pygmy sloth's resiliency using two criteria: a population-abundance criterion and a forest-extent criterion. We incorporate the knowledge that the species has likely always been rare by basing the population abundance criterion on detection of a population decline in addition to considering absolute abundance, as rarer species are at elevated risk of extinction even if the rarity is natural (Flather and Sieg 2007, entire; Johnson 1998, entire). The forest-extent criterion subsumes the pygmy sloth's requirements for shelter, connectivity, and native food plants.

Considering these two resiliency criteria to account for the species' demographic and habitat requirements, we determined thresholds for high, medium, and low resiliency for the pygmy sloth. High resiliency would indicate a high probability of population viability with minimal to no declines in population size. Moderate resiliency would indicate the species has experienced possible population declines. Low resiliency would indicate low probability of population viability with certain population decline.

While it is difficult to estimate the true size of the population due to the challenge of detecting (and therefore counting) pygmy sloths (Voirin 2015, p. 705), the most recent estimate of the total pygmy sloth population size is 2,000–2,500 individuals, and the population is estimated to be declining (Smith et al. 2022, unpaginated). The most recently available population trend data from mangrove surveys in 2014–2017 show no change in encounter rate of sloths, although the uncertainty in abundance is large (ZSL 2017, p. 13). All estimates indicate an extremely small number for an entire species (Smith et al. 2022, unpaginated).

Based on our assessment of deforestation from 2000–2020, only 0.11 percent of forested area in 2000 (totaling 3.95 km^2) was deforested by 2020 (data from Hansen et al. 2013, unpaginated; Service 2023, pp. 14–16). This assessment, however, is based on satellite data (approximately 30 meters (m) resolution) and does not detect partial clearings. While ground-based mapping of deforestation events shows partial tree clearing has occurred on Escudo (ZSL 2017, p. 16) and a recently published assessment indicates habitat degradation has resulted in a continuing decline in the quality of pygmy sloth habitat (Smith et al. 2022, unpaginated), our assessment indicates the forest extent on Escudo remains mostly intact.

We assess that the pygmy sloth presently has moderate-to-high resiliency, because the best available data indicate that pygmy sloth abundance and the extent of habitat available on Escudo have not considerably declined, but there remains substantial uncertainty in these estimates.

With no captive individuals and only one wild population located on an island less than 5 km^2 in extent, the

pygmy sloth naturally has very low redundancy. Although very few large cyclones and storms reach Escudo, it is seismically active, and loss of the Escudo population would equate to global extinction.

With respect to representation, the isolation of a small number of founder individuals when the pygmy sloth separated from the mainland population of brown-throated sloths (likely around 9,000 years ago; Anderson and Handley 2001, p. 4) would have created a natural genetic bottleneck (a sharp decrease in a population's genetic diversity as a result of a reduction in population size; Silva 2013, p. 138). Today, genetic variation in the population is low (Silva et al. 2018, p. 1301), and because the pygmy sloth only inhabits Escudo, the habitats it uses have little ecological variation. For these reasons, we consider the pygmy sloth's ability to adapt to changing environments, and thus its representation, to be naturally low.

Future Scenarios

Based on our assessment, we concluded that two important potential threats to pygmy sloth viability in the future are: (1) increased development and tourism around—and visitation to—the island, together with the increased likelihood of illegal taking and trade in the species, and (2) increased habitat loss and degradation caused by deforestation and inundation of Escudo.

In the SSA report, we forecast the species' status under two alternative future scenarios and six climate-change projections (encompassing the uncertainty in sea-level-rise trajectories) to determine how deforestation, the demand for sloths in the pet and tourism market, and the potential for the already small extent of Escudo to be further reduced by rising sea level would affect the species. Specifically, our scenarios include ''status quo'' and ''improved conservation capacity'' alternatives to assess the potential impacts of growing development and tourism. For each of these two scenarios, we assessed six climate-change projections to help encompass the uncertainty in sea-level-rise trajectories for the year 2050. This is approximately 30 years from this proposed listing and would include time for climate change and development to progress, as well as for conservation activities affecting Escudo to grow. Based on studies from other three-toed sloth species, this 30-year timeframe will include around three to five generations of pygmy sloths (Anderson and Handley 2002, p. 1051).

Tourism and Development

A comprehensive understanding of the current and future conditions of tourism on Escudo is currently lacking due to uncertainty in plans for imminent coastal development and the inherent difficulty of monitoring and enforcing regulations because of the remote nature of the island and lack of funding for enforcement. Observational accounts indicate that although large tourism operations are not currently reaching Escudo, the amount of tourism arriving to the island is increasing, and, if the planned development of the nearby remote coastline occurs, tourism, including from large outfitters, will likely increase in volume (Jordan 2021, pers. comm.; Smith 2021, pers. comm.; Voirin 2021, pers. comm.).

International tourist visitation to Panama grew by 150 percent between 2000 and 2008, and nature-based tourism is an increasing portion of Panama's economy (Beaton and Hadzi-Vazkov 2017, pp. 23–29). Tourism grew fast in the coastal and island regions of Bocas Del Toro province (to which Escudo belongs) from the 1990s onwards, including growing accessibility to vast stretches of beach and rainforest. For instance, beginning in 2004 and continuing into at least 2017, a major road was under construction from Santa Fe to the coastal city of Calovebora in northern Veraguas province (Bilbao 2017, unpaginated). The road's route is a major new access point to undeveloped areas within easy boating distance of Escudo (Bilbao 2017, unpaginated). Additionally, developers have for several years been amassing land holdings in the regions near Escudo, and they may be planning for the resale of lots for future homes and hotels (Jordan 2021, pers. comm).

As additional people move to and visit the region, the very strong demand for sloths taken from the wild for tourists' ''sloth selfies'' or for sale into the pet trade (Greenfield 2020, unpaginated) will likely impact pygmy sloths (Voirin 2021, pers. comm.; Jordan 2021, pers. comm.). For example, other sloth species are illegally collected from the wild in Colombia for hands-on tourism or illegal pet trade (Gorder 2021, unpaginated; Moreno and Plese 2006, p. 12).

The General Law on Environment of the Republic of Panama (Article 23 of Law No. 41 (1998)) requires that public or private projects, including tourism developments, be vetted through an environmental-impact-assessment (EIA) process administered by the national Ministry of the Environment (Gonzalez 2008, p. 324; Bethancourt 2000, unpaginated). In practice, however, developers often do not file for an EIA or do so very late in the project's progress, which makes substantive changes to the project challenging (Jordan 2021, pers. comm.). Consultations that do take place, particularly in remote locations, are frequently cursory (Jordan 2021, pers. comm.).

By 2050 under the status quo alternative, if the lack of environmental law enforcement capacity in the remote Escudo region (ZSL 2017, p. 18) continues, the limitations of Panama's EIA process are not rectified, and the unplanned nature of regional development (Jordan 2021, pers. comm.) persists, modest to large declines in the species' population are likely. These declines are likely due to the stresses of increased visitation to Escudo (including up-close encounters), habitat degradation, and illegal poaching to meet the demand for the pet and zoo trade domestically and internationally.

If, on the other hand, the ongoing conservation efforts (see *Conservation Efforts and Regulatory Mechanisms,* above) lead to improved conservation capacity around Escudo, pygmy sloth population declines would be less likely to occur. A future with improved conservation capacity would include the regular presence of well-equipped conservation officers from the national Ministry of the Environment or Indigenous governments or both, and only sustainable, well-regulated tourist visits to Escudo with no pygmy sloths captured or disturbed. A completed management plan would include enforcement of specific limitations on the volume and activities of tourists and others to avoid pygmy sloth collection and deforestation. While ongoing work to support pygmy sloth conservation (see *Conservation Efforts and Regulatory Mechanisms,* above) indicates this is a possible future scenario, given the historical and ongoing challenges of regulation and enforcement on Escudo, this outcome is less likely than the status quo scenario.

Loss of Habitat

Given its small island habitat, the pygmy sloth's viability is sensitive to the potential for further reduction in the available areas on Escudo, for example losses due to sea-level rise and deforestation. To assess the impacts of sea-level rise, we used climate models forecasting where land presently above water will be lost due to sea-level rise. We used these data to project the extent of pygmy sloth habitat expected to be lost under different climate-change

scenarios. Specifically, we included six alternative climate trajectories defined by the (1) degree of greenhouse-gas emissions reduction achieved (three representative concentration pathways (RCPs), RCPs 2.6, 4.5, and 8.5) by 2050, and (2) two different rates of Antarctic ice-sheet melting, an uncertain but potentially major contributor to global sea-level rise (Kulp and Strauss 2018, p. 2; Kopp et al. 2017, entire; Kopp et al. 2014, entire).

The RCPs are Intergovernmental Panel on Climate Change (IPCC) scenarios that describe alternative future trajectories of greenhouse gas emissions and that are used to drive climate-model projections in response to higher or lower future emission rates (IPCC 2014, p. 8). In the RCP names, the values 2.6, 4.5, and 8.5 refer to the rate at which energy is trapped by Earth's atmosphere in watts per square meter (m^2) at the height of warming for the given scenario; thus, RCP 8.5 is a scenario indicating faster warming than RCP 4.5. RCP 8.5 is considered a ''high-emission business as usual scenario,'' *i.e.,* towards the upper end of what might occur without climate-change mitigation policy (Riahi et al. 2011, p. 54). RCP 4.5 is based on a lower-emissions future in which renewable energy, greater energy efficiency, and carbon capture and storage are more widely implemented (Thomson et al. 2011, p. 77). RCP 2.6 represents stringent cuts to greenhouse gas emissions sufficient to limit warming to 2 degrees Celsius (°C) (van Vuuren et al. 2011, entire).

The extent of Escudo habitat inundated by 2050 ranged from 0.04 percent (RCP 2.6, no rapid West Antarctic melting) to 0.08 percent (RCP 8.5, rapid West Antarctic melting; Service 2023, p. 20). Even if we assumed for the most pessimistic scenario (0.08 percent of the entire island inundated) that the entirety of the inundated habitat was concentrated within the 2.5 percent of the island that is mangrove forests, only slightly more than 3 percent of the mangroves would be inundated. However, although inundation is focused on coastal edges of the island and includes some locations on the north coast where mangroves grow, part of the inundation will occur outside the mangroves, so the 3 percent figure is likely an overestimate. Moreover, red mangroves can possibly keep pace with sea-level rise by growing taller and accumulating peat beneath their stilt roots (Mckee et al. 2007, entire; Feller 2021, pers. comm.). The interior forest habitat is more extensive than mangroves (ZSL 2017, p. 11) and, when compared to estimates for mangrove forests, less interior forest habitat is projected to be lost as a result of sea-level rise. Thus, we project that loss of habitat due to sea-level rise will be at most 3 percent across mangrove and interior forest habitats.

Deforestation presents a second potential cause of habitat loss and degradation. Forecasting future rates of deforestation is difficult due to the discrepancies between ground observations and satellite data of deforestation, as well as the unknown impact that, if implemented, development plans and potential subsequent tourism increases might have on deforestation. Under a status quo future, deforestation may continue as it occurs now, at low and consistent levels, or it may increase, given the interest expressed by some Indigenous people in living on Escudo and the expansion of tourism and associated infrastructure development on the island. With improved conservation capacity, including increased monitoring and enforcement of land use of the island, we project that deforestation levels would be low.

Overall Future Resiliency, Redundancy, and Representation

Regardless of the climate-change scenario, if the conservation capacity around Escudo does not improve (*i.e.,* if it remains at the status quo), the total resilience of the pygmy sloth is projected to decline, likely falling into the moderate-to-low-resiliency category, and potentially falling into the low-resiliency category. If conservation capacity is improved around Escudo, we project that the pygmy sloth's resiliency could improve despite the species' natural rarity. However, high uncertainty exists in both current and future resiliency due to the limited data available on population abundance, rates of deforestation, and effects of tourism and development on the species. Additionally, given the historical and current lack of regulatory and enforcement capacity, outcomes under the improved-conservation-capacity scenario, although possible, are less likely than those under the status quo scenario.

Redundancy is not projected to change under any of the future scenarios; we expect there to remain only the single Escudo population. Representation may remain the same or may decrease if tourists arriving at the relatively accessible island edge and beaches stress pygmy sloths into retreating into the interior forest and reduce the habitat types pygmy sloths use, further limiting the species' adaptive potential.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Determination of Pygmy Sloth's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the future viability of the pygmy sloth will be reduced as ongoing and future development on the mainland nearest Escudo increases accessibility to the island, likely reducing the pygmy sloth's resiliency, which along with its naturally low redundancy and representation will likely compromise the security of the species' continued existence within the foreseeable future.

The pygmy sloth is a narrow endemic species with a small population and very limited range. Given the pygmy sloth's rarity and low genetic diversity, the species has naturally low

representation and redundancy. While tourism and small-scale timber harvest are ongoing in the species' range, the pygmy sloth is not currently at risk of extinction because it maintains moderate-to-high resiliency with a variety of age classes and evidence of reproduction, and while it is naturally restricted to the very small island of Escudo, its habitat requirements do not currently appear to be limiting. Although the species currently is not at risk of extinction, threats to the species are expected to increase in the foreseeable future. Ongoing and anticipated development on the nearby mainland will facilitate increased access to Escudo, increasing disturbance to pygmy sloths through deforestation, up-close interactions, and illegal taking and smuggling into domestic and international trade for personal and commercial purposes. While there are regulatory mechanisms in place to protect against these threats, enforcement in the species' relatively remote range is limited and is likely inadequate to reduce the impacts of increased tourism and deforestation. The current population of the pygmy sloth is estimated to be declining, and the likely increase of threats in the foreseeable future will reduce the species' viability to a point that it is likely to lack sufficient resiliency, representation, and redundancy for its continued existence to be secure.

Thus, after assessing the best available information, we conclude that the pygmy sloth is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range due to increased threats from tourism and development that will likely lead to habitat loss and degradation (Factor A), overutilization in a variety of forms from increasing human interactions (Factor B), and the inadequacy of existing regulatory mechanisms (Factor D).

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for pygmy sloth, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

We evaluated the range of the pygmy sloth to determine if the species is in danger of extinction now in any portion of its range. The pygmy sloth is a narrow endemic that functions as a single, contiguous population and occurs entirely within a 4.3 km^2 island. Thus, there is no biologically meaningful way to break this limited range into portions, and the threats that the species faces affect the species throughout its entire range. As a result, there are no portions of the species' range where the species has a different biological status from its rangewide biological status. Therefore, we conclude that there are no portions of the species' range that warrant further consideration, and the species is not in danger of extinction in any significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the pygmy sloth meets the Act's definition of a threatened species. Therefore, we propose to list the pygmy sloth as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. Under the Act, a number of steps are available to advance the conservation of species listed as endangered or threatened species. As explained further below, these conservation measures include: (1) recognition, (2) recovery actions, (3) requirements for Federal protection, (4) financial assistance for conservation programs, and (5) prohibitions against certain activities.

Recognition through listing results in public awareness, as well as in conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Section 7 of the Act is titled, ''Interagency Cooperation,'' and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

A Federal ''action'' that is subject to the consultation provisions of section 7(a)(2) of the Act is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal

agencies in the United States or upon the high seas. With respect to pygmy sloth, no known actions require consultation under section 7(a)(2) of the Act. Given the regulatory definition of ''action,'' which clarifies that it applies to activities or programs ''in the United States or upon the high seas,'' the pygmy sloth is unlikely to be the subject of section 7 consultations, because the entire life cycle of the species occurs in terrestrial areas outside of the United States and the species is unlikely to be affected by U.S. Federal actions. Additionally, no critical habitat will be designated for the species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) of the Act also prohibit the violation of any regulation issued under section 4(d) of the Act pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 9(g) additionally makes it illegal to attempt to commit, to solicit another to commit, or to cause to be committed any act prohibited under Section 9, including violations of a 4(d) rule. Section 4(d) of the Act grants the Secretary broad discretion to prohibit with respect to any threatened species any act prohibited under Section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Section 4(d) also directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that would or would not be considered likely to result in violation of section 9 of the Act beyond those included in the descriptions of proposed prohibitions and exceptions we would establish by protective regulation under section 4(d) of the Act (see II. Proposed Rule Issued Under Section 4(d) of the Act, below).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are codified at 50 CFR 17.32, and general Service permitting regulations are codified at 50 CFR part 13. With regard to threatened wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, for economic hardship, for zoological exhibition, for educational purposes, and for special purposes consistent with the purposes of the Act. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service may also register persons subject to the jurisdiction of the United States through its captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species, including take; export or re-import; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity; or sale or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to be eligible by regulation. The individual specimens must have been born in captivity in the United States.

Separate from its proposed listing as a threatened species, as a CITES-listed species, all international trade of pygmy sloths by persons subject to the jurisdiction of the United States must also comply with CITES requirements pursuant to section 9, paragraphs (c) and (g), of the Act and to 50 CFR part 23. Applicable wildlife import/export requirements established under section 9, paragraphs (d), (e), and (f), of the Act; the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*); and 50 CFR part 14 must also be met for pygmy sloth imports and exports. Questions regarding whether specific activities with pygmy sloths would constitute a violation of section 9 of the Act should be directed to the Service's Division of Management Authority (*managementauthority@fws.gov;* 703–358–2104).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this

standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this proposed 4(d) rule would promote conservation of the pygmy sloth by ensuring that activities undertaken with the species by any person under the jurisdiction of the United States are also supportive of the conservation efforts undertaken for the species in Panama, as well as under the CITES Appendix-II listing. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the pygmy sloth. This proposed 4(d) rule would apply only if and when we make final the listing of the pygmy sloth as a threatened species.

As discussed above under Summary of Biological Status and Threats, we have concluded that the pygmy sloth is likely to become in danger of extinction within the foreseeable future primarily due to the impacts that nearby development and subsequent increased tourism will have on the species and its habitat. Under the proposed 4(d) rule, prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) of the Act would help minimize threats that could cause further declines in the species' status.

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the pygmy sloth's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the pygmy sloth is likely to become in danger of extinction within the foreseeable future primarily due to the impacts that nearby development and subsequent increased tourism will have on the species and its habitat. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the pygmy sloth.

The protective regulations we are proposing for the pygmy sloth incorporate prohibitions from section 9(a)(1) to address the threats to the species. The prohibitions of section 9(a)(1) of the Act, and implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife, unless they are otherwise authorized or permitted: (1) import into, or export from, the United States; (2) take within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies. Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. This protective regulation would provide for the conservation of the pygmy sloth by including all of these prohibitions because the pygmy sloth is at risk of extinction within the foreseeable future and putting these prohibitions in place would help to decrease synergistic, negative effects from other ongoing or future threats.

As discussed above under Summary of Biological Status and Threats, deforestation, tourism and development around Escudo, and collection for tourism, pet, and zoo demand are affecting the status of the pygmy sloth. Prohibiting take (which applies to take within the United States, within the territorial sea of the United States, or upon the high seas) would indirectly contribute to conservation of the species in its range country of Panama by helping to prevent attempts to captive-breed the species to establish a domestic market for trade of pygmy sloths. Collection of the species for tourism, zoo, and pet demand poses an ongoing threat to the species due to its limited range and small population size. Further regulating import and export to, from, and through the United States and foreign commerce by persons subject to the jurisdiction of the United States could deter breeding and demand for the species and help conserve the species by eliminating the United States as a potential market for illegally collected and traded pygmy sloths.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32).

There are other standard exceptions to the prohibitions included in the proposed 4(d) rule for the pygmy sloth (see Proposed Regulation Promulgation, below), and the statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act. If the species-specific 4(d) rule is finalized as proposed, the import exemption for threatened wildlife listed in Appendix II of CITES (50 CFR 17.8; section 9(c)(2) of the Act) would not apply to this species. A threatened species import permit under 50 CFR 17.32 would be required for the importation of all specimens of pygmy sloth. Further, as noted above, we may also authorize certain activities associated with conservation breeding

under CBW registrations. We recognize that captive breeding of wildlife can support conservation, for example by producing animals that could be used for reintroductions. We are not aware of any captive-breeding programs of pygmy sloths for this purpose. The proposed 4(d) rule would apply to all live pygmy sloths and dead pygmy sloth parts and products and supports conservation management efforts for pygmy sloths in the wild in Panama.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for ''Sloth, pygmy three-toed'' in alphabetical order under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
	MAMMALS			
* *	*	* *	* *	* *
Sloth, pygmy three-toed	*Bradypus pygmaeus*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.40(v).[4d]
* *	*	* *	* *	* *

■ 3. Amend § 17.40 by adding paragraph (v) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(v) Pygmy three-toed sloth (*Bradypus pygmaeus*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the pygmy three-toed sloth. Except as provided under paragraph (v)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(iv) Conduct activities as authorized by a captive-bred wildlife registration under § 17.21(g) for endangered wildlife.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–05724 Filed 3–25–24; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 89, No. 59
Tuesday, March 26, 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

Agricultural Marketing Service

[Doc. No. AMS–SC–24–0006]

Fruit and Vegetable Industry Advisory Committee: Notice of Intent To Renew Charter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of intent to renew charter.

SUMMARY: Through this Notice, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing its intent to renew the Charter of the Fruit and Vegetable Industry Advisory Committee (FVIAC), which expires May 23, 2024.

DATES: The current FVIAC Charter expires on May 23, 2024.

Comments: Interested persons are invited to submit comments on this notice. Comments will be accepted until 11:59 p.m. Eastern Time on May 1, 2024, via *https://www.regulations.gov:* Document # AMS–SC–24–0006. AMS, Specialty Crops Program strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the abovementioned deadline.

FOR FURTHER INFORMATION CONTACT: Jennie Varela, Senior Marketing Specialist, AMS Specialty Crops Program—U.S Department of Agriculture, 1124 1st Street South, Winter Haven, FL 33880. Jennie Varela serves as the Designated Federal Officer and can be reached by Telephone: (202) 658–8616 or by Email: *SCPFVIAC@usda.gov.* Mailing address: Jennie Varela, U.S. Department of Agriculture, AMS Specialty Crops Program—U.S Department of Agriculture, 1124 1st Street South, Winter Haven, FL 33880, Attn: Fruit and Vegetable Industry Advisory Committee.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), notice is hereby given that the Secretary of Agriculture intends to reestablish the FVIAC for two years. The purpose of the FVIAC is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs.

The Deputy Administrator of the AMS Specialty Crops Program serves as the FVIAC Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry could be called upon to participate in the FVIAC's meetings as determined by the FVIAC Executive Secretary and the FVIAC. Industry members are appointed by the Secretary of Agriculture and serve 2-year terms, with a maximum of three 2-year terms. Up to 25 members shall represent: fruit and vegetable growers and/or shippers; fruit and vegetable wholesalers and/or receivers; brokers; retailers; fruit and vegetable processors and/or fresh-cut processors; foodservice suppliers; organic and/or non-organic farmers; farmers markets and community-supported agricultural organizations; state agriculture departments; and trade associations.

Equal opportunity practices in accordance with USDA's policies will be followed in all member appointments to the FVIAC. To ensure that the recommendations of the FVIAC have considered the needs of the diverse groups served by USDA, membership shall include, to the extent possible, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities.

The Charter for the FVIAC will be available on the website at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/fviac* or may be requested by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: March 20, 2024.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2024–06356 Filed 3–25–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Forest Plan Area Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northwest Forest Plan Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the National Forest Management Act and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to provide advice and pragmatic recommendations regarding potential regional scale land management planning approaches and solutions within the Northwest Forest Plan area within the context of the 2012 Planning Rule.

DATES: An in-person and virtual meeting will be held on April 16, 09:00 a.m. to 5:00 p.m. Pacific Daylight Time (PDT), April 17, 2024, 11:00 a.m. to 5:00 p.m. PDT, and April 18, 2024, 09:00 a.m. to 5:00 p.m. PDT.

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. PDT on April 5, 2024. Written public comments will be accepted through 11:59 p.m. PDT on April 5, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the

person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person, at the Redding Rancheria Trinity Health Center, 81 Arbuckle Ct., Weaverville, CA 96093. Committee information and meeting details can be found at the Northwest Forest Plan Federal Advisory Committee website at *https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1076013* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *sm.fs.nwfp_faca@usda.gov or* via mail (postmarked) to Katie Heard, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, April 5, 2024, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (postmarked) to Katie Heard, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Jacqueline Buchanan, Designated Federal Officer, by phone at 303–275–5452 or email at *Jacqueline.buchanan@usda.gov;* or Katie Heard, FACA Coordinator, at *Kathryn.Heard@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide recommendations to the Forest Service for updates to the Northwest Forest Plan.
2. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: March 19, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–06312 Filed 3–25–24; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Missouri Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a public briefing meeting on Thursday, April 4, 2024, at 2:30 p.m.–5:00 p.m. Central time. The purpose of the meeting is for the Committee to hear testimony regarding project in their state.

DATES: The meeting will take place on Thursday, April 4, 2024, at 2:30 p.m.–5:00 p.m. Central Time.

Public Call Information: Dial: (833) 435–1820, Webinar ID: 161 101 7824.

Registration Link (Audio/Visual): *https://www.zoomgov.com/webinar/register/WN_K436kL9hRSqtejO5E6u4hQ.*

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Panelist Testimony
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: March 21, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–06404 Filed 3–25–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Michael David Mummert, Inmate Number: 38011–509, U.S. Penitentiary, P.O. Box 1000, Leavenworth, KS 66048; Order Denying Export Privileges

On November 29, 2022, in the U.S. District Court for the Eastern District of Texas, Michael David Mummert (''Mummert'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554. Specifically, Mummert was convicted of conspiring to smuggle firearms and firearms parts from the United States to Mexico without first having obtained the required export license and authorization from the United States Department of State or United States Department of Commerce. As a result of his conviction, the Court sentenced him to 36 months in prison, three years of supervised release, a $100 assessment and a $10,000 fine.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C § 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Mummert conviction for violating 18 U.S.C. 371 and 18 U.S.C 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Mummert to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Mummert.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Mummert's export privileges under the Regulations for a period of 10 years from the date of Mummert's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Mummert had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 29, 2032, Michael David Mummert, with a last known address of Inmate Number: 38011–509, U.S. Penitentiary, P.O. Box 1000, Leavenworth, KS 66048 and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Mummert by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Mummert may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Mummert and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 29, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–06267 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Niloufar Bahadorifar, 6417 Spectrum, Irvine, CA 92618; Order Denying Export Privileges

On April 7, 2023, in the U.S. District Court for the Southern District of New York, Niloufar Bahadorifar (''Bahadorifar''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C 1701, *et seq.*) (''IEEPA''). Specifically, Bahadorifar was convicted of conspiring to provide services to Iran and the Government of Iran from the United States without first obtaining the required approval from U.S. Department of Treasury, Office of Foreign Assets Control. As a result of her conviction, the Court sentenced Bahadorifar to 48 months of imprisonment, three years of supervised release, and a $200 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Bahadorifar's conviction for violating IEEPA, and has provided notice and opportunity for Bahadorifar to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a written submission from Bahadorifar.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Bahadorifar's export privileges under the Regulations for a period of 10 years from the date of Bahadorifar's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Bahadorifar had an interest at the time of her conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until April 7, 2033, Niloufar Bahadorifar, with a last known address of 6417 Spectrum, Irvine, CA 92618, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Bahadorifar by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Bahadorifar may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Bahadorifar and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 7, 2033.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–06268 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Juan Jose Roque, Inmate Number: 74029–509, FMC Fort Worth, P.O. Box 15330, Fort Worth, TX 76119; Order Denying Export Privileges

On August 29, 2022, in the U.S. District Court for the Southern District of Texas, Juan Jose Roque (''Roque'') was convicted of violating 18 U.S.C. 554. Specifically, Roque was convicted of smuggling from the United States to Mexico, 12,800 rounds of 7.62 x 39mm

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

ammunition, 150 rounds of 38 Special ammunition 60 rounds of .223 caliber ammunition and one Stoeger Cougar 9mm pistol, without a license or written approval from the U.S. Department of Commerce. As a result of his conviction, the Court sentenced him to 46 months in prison, and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Roque's conviction for violating 18 U.S.C 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Juan Jose Roque to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Roque.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Roque's export privileges under the Regulations for a period of 10 years from the date of Roque's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Roque had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until August 29, 2032, Juan Jose Roque, with a last known address of Inmate Number: 74029–509, FMC Fort Worth, P.O. Box 15330, Fort Worth, TX 76119, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Juan Jose Roque by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Roque may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Roque and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 29, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–06266 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–816]

Certain Steel Nails From Malaysia: Final Results of Antidumping Duty Administrative Review; 2021–2022; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of February 6, 2024, in which Commerce published the final results of the 2021–2022 antidumping duty administrative review of certain steel nails (nails) from Malaysia. This notice omitted the name of one non-selected respondent, RM Wire Industries Sdn., Bhd., from Appendix II (''List of Non-Selected Respondents'').

FOR FURTHER INFORMATION CONTACT: John Drury or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2024, Commerce published in the **Federal Register** the *Final Results* of the administrative review of nails from Malaysia.[1] We omitted from Appendix II of that notice, entitled ''List of Non-Selected Respondents,'' the name of one non-selected respondent, RM Wire Industries Sdn., Bhd.

Correction

In the **Federal Register** of February 6, 2024, in FR Doc 2024–02294, on page 8165, in the first column, correct Appendix II by adding ''RM Wire Industries Sdn., Bhd.'' to the alphabetical list of non-selected respondents, after ''Oman Fasteners LLC.'' and before ''Soon Shing Building Materials Sdn., Bhd.''

Notification to Interested Parties

This notice is issued and published in accordance with section(s) 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.221.

Dated: March 20, 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. 2024–06363 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–165, C–552–840]

Certain Paper Plates From the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

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

DATES: Applicable March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg (the Socialist Republic of Vietnam (Vietnam)) and Eliza DeLong (the People's Republic of China (China)), AD/CVD Operations, Offices I and V, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–3878, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2024, the U.S. Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of certain paper plates (paper plates) from China and Vietnam.[1] Currently, the preliminary determinations are due no later than April 19, 2024.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 15, 2024, the petitioner[2] submitted a timely request that Commerce postpone the preliminary CVD determinations.[3] The petitioner requested postponement because Commerce needs additional time to examine the number and nature of the subsidy programs under investigation, and the normal 65-day deadline for the preliminary determinations is not sufficient time for Commerce to adequately examine the amount of subsidies.[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.,* June 24, 2024.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 20, 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. 2024–06364 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD781]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice; notification of quota for bowhead whales.

SUMMARY: NMFS notifies the public of the aboriginal subsistence whaling quota for bowhead whales assigned to the Alaska Eskimo Whaling Commission (AEWC), and of limitations on the use of the quota deriving from regulations of the International Whaling Commission (IWC). For 2024, the AEWC quota is 93 bowhead whales struck. This quota and other applicable limitations govern the harvest of bowhead whales by whaling captains of the AEWC.

DATES: Applicable March 26, 2024.

ADDRESSES: Office of International Affairs, Trade, and Commerce, National

[1] *See Certain Steel Nails from Malaysia: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 8163 (February 6, 2024) (*Final Results*).

[1] *See Certain Paper Plates from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 89 FR 13043 (February 21, 2024) (*Initiation Notice*).

[2] The petitioner is the American Paper Plate Coalition.

[3] *See* Petitioner's Letter, ''Petitioner's Request to Postpone the Deadline for the Preliminary Determinations,'' dated March 15, 2024 at 2.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Sunday, June 23, 2024. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day, in this case Monday, June 24, 2024. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, (301) 427–8365.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (WCA) (16 U.S.C. 916 *et seq.*). Under the WCA, IWC regulations shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States within 90 days of notification from the IWC Secretariat of an amendment to the IWC Schedule (16 U.S.C. 916k). Regulations that implement the WCA, found at 50 CFR part 230, require the Assistant Administrator for Fisheries to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 67th meeting of the IWC in 2018, the Commission set catch limits for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock for the years 2019–2025. The bowhead and other aboriginal subsistence whaling catch limits were based on a joint request by Denmark on behalf of Greenland, the Russian Federation, St. Vincent and the Grenadines, and the United States, accompanied by documentation concerning the needs of the Native groups.

The IWC set a 7-year block catch limit of 392 bowhead whales landed. For each of the years 2019 through 2025, the number of bowhead whales struck may not exceed 67, with unused strikes from the three prior quota blocks carried forward and added to the annual strike quota of subsequent years, provided that no more than 50 percent of the annual strike limit is added to the strike quota for any one year. For the 2024 harvest, there are 33 strikes available for carry-forward, so the combined strike quota set by the IWC for 2024 is 100 (67 + 33).

Recognizing that Alaska and Russian Natives hunt the bowhead whale, the United States and Russia have an understanding that the two countries share the bowhead whale quota. NOAA has assigned 93 strikes to the AEWC through its cooperative agreement with the AEWC, accounting for bowhead whales that may be hunted by Russian Natives. The AEWC will in turn allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented, and will ensure that AEWC whaling captains use no more than 93 strikes.

At its 67th Meeting, the IWC also provided for an automatic extension of aboriginal subsistence whaling catch limits under certain circumstances. Commencing in 2026, bowhead whale catch limits shall be extended every 6 years provided: (a) the IWC Scientific Committee advises in 2024, and every 6 years thereafter, that such limits will not harm the stock; (b) the Commission does not receive a request from the United States or the Russian Federation for a change in the bowhead whale catch limits based on need; and (c) the Commission determines that the United States and the Russian Federation have complied with the IWC's approved timeline and that the information provided represents a status quo continuation of the hunts.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) also contain other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here:

- No person, other than licensed whaling captains or crew under the control of those captains, shall engage in aboriginal subsistence whaling.
- No AEWC whaling captain shall engage in whaling that is not in accordance with the regulations of the IWC, NOAA, and the cooperative agreement between NOAA and the AEWC.
- No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.
- No person may receive money for participating in the hunt.
- No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts.
- Captains cannot continue to whale after the relevant quota is reached, after the season has been closed, or if their licenses have been suspended.
- No captain shall engage in whaling in a wasteful manner.

Dated: March 20, 2024.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2024–06293 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD615]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Murphy Exploration and Production Company (Murphy) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 1, 2024 through October 31, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds

that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Murphy plans to conduct a three-dimensional (3D) ocean bottom node (OBN) survey in the Green Canyon protraction area, including approximately 44 lease blocks. Approximate water depths of the survey area range from 914 to 3,372 meters (m). See section F of the LOA application for a map of the area.

Consistent with the preamble to the final rule, the survey effort proposed by Murphy in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* two-dimensional (2D), 3D narrow-azimuth (NAZ), 3D wide-azimuth (WAZ), Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern.

The planned 3D OBN survey will involve one source vessel. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Murphy is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 25.6 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Murphy in terms of predicted Level B harassment exposures. In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 cubic inch (in^3) array. Thus, as discussed above, estimated take numbers for this LOA are considered conservative due to differences in both the airgun array (28-element, 5,230 in^3) and daily survey area planned by Murphy, as compared to those modeled for the rule.

The survey will take place over approximately 44 days, including 40 days of sound source operation, with all 40 days within Zone 5. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (*e.g.,* 86 FR 5322, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public. For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for Rice's whales and killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include winter (December to March) and summer (April to November).

calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 and 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling has identified similar habitat (*i.e.,* approximately 100 to 400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016; Garrison et al., 2023), and Rice's whales have been detected within this depth band throughout the GOM (Soldevilla et al., 2022, 2024). See discussion provided at, *e.g.,* 83 FR 29228, June 22, 2018; 83 FR 29280, June 22, 2018; 86 FR 5418, January 19, 2021.

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100 to 400 m) and that, based on the few available records, these occurrences would be rare. Murphy's planned activities will occur in water depths of approximately 914 to 3,372 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017 to 2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992 to 2009 NOAA surveys (Fraser's dolphin and false killer whale) [4]. However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002 to 2008 and 2009 to 2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322 and 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia spp.* or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3 to 2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0 and 10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1 to 30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000 in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, January 19, 2021; 86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See table 1 in this notice and table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, January 19, 2021; 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3 month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	0
Sperm whale	1,052	445	2,207	20.2
Kogia spp.	[3] 398	121	4,373	3.2
Beaked whales	4,644	469	3,768	12.4
Rough-toothed dolphin	798	229	4,853	4.7
Bottlenose dolphin	3,783	1,086	176,108	0.6
Clymene dolphin	2,247	645	11,895	5.4
Atlantic spotted dolphin	1,511	434	74,785	0.6
Pantropical spotted dolphin	10,196	2,926	102,361	2.9
Spinner dolphin	2,732	784	25,114	3.1
Striped dolphin	878	252	5,229	4.8
Fraser's dolphin	252	72	1,665	4.3
Risso's dolphin	660	195	3,764	5.2
Melon-headed whale	1,476	435	7,003	6.2
Pygmy killer whale	347	102	2,126	4.8
False killer whale	553	163	3,204	5.1
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	427	126	1,981	6.4

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322 and 86 FR 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 21 takes by Level A harassment and 377 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Murphy's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Murphy authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: March 20, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06307 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Digital Equity Competitive Grant Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the

Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which help us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 28, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Arica Cox, Telecommunications Policy Analyst, Grants Management and Compliance, Office of Internet Connectivity and Growth, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4826, Washington, DC 20230, or by email to *broadbandusa@ntia.gov.* Please reference ''Digital Equity Competitive Application Forms Comment'' in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Arica Cox, Telecommunications Policy Analyst, Grants Management and Compliance, via telephone at (202) 482–2048, or via email at *acox@ntia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Infrastructure Investment and Jobs Act, 2021 (Infrastructure Act or Act), which was adopted on November 15, 2021, and is also known as the Bipartisan Infrastructure Law, provided $65 billion of funding for programs to close the digital divide and ensure that all Americans have access to affordable, reliable, high-speed internet. NTIA administers multiple broadband connectivity grant programs funded by the Act, including the Digital Equity Competitive Grant Program (''Competitive Grant Program''). The Competitive Grant Program provides new federal funding for grants to eligible applicants for the purpose of supporting efforts to achieve digital equity, promoting digital inclusion activities, and spurring greater adoption of broadband among covered populations.

NTIA will use the information collected from each applicant to effectively review the proposed applications and budgets from political subdivisions, agencies, or instrumentalities of a State; Indian Tribes, Alaska Native entities, and Native Hawaiian organizations; foundations, corporations, institutions, and associations that are not-for-profit entities and not schools; community anchor institutions; local educational agencies; entities that carry out workforce development programs; and other eligible entities (or partnerships between such entities) for the Competitive Grant Program.

II. Method of Collection

NTIA will collect data through both electronic and mail submission.

III. Data

OMB Control Number: 0660–XXXX.

Form Number(s): TBD.

Type of Review: Regular submission for a new information collection.

Affected Public: Eligible entities applying for Infrastructure Act Digital Equity Competitive Grant Program funding, including political subdivisions, agencies, or instrumentalities of a State; Indian Tribes, Alaska Native entities, and Native Hawaiian organizations; foundations, corporations, institutions, and associations that are not-for-profit entities and not schools; community anchor institutions; local educational agencies; and entities that carry out workforce development programs; and other eligible entities (or partnerships between such entities).

Estimated Number of Respondents: 500.

Estimated Time per Response: 14 hours for consortia applicants; 10 hours for individual applicants.

Estimated Total Annual Burden Hours: 6,200 hours.

Estimated Total Annual Cost to Public: $284,816.00.

Respondent's Obligation: Mandatory.

Legal Authority: Section 60305 of the Infrastructure Investment and Jobs Act of 2021, Public Law 117–58, 135 Stat. 429 (November 15, 2021).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility. Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used. Evaluate ways to enhance the quality, utility, and clarity of the information to be collected. Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–06420 Filed 3–25–24; 8:45 am]

BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2024–0013]

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 ''Making Ends Meet Survey'' approved under OMB Control Number 3170–0080.

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–2024–0013 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: Making Ends Meet Survey.

OMB Control Number: 3170–0080.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,500.

Estimated Total Annual Burden Hours: 1,375.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act charges the Consumer Financial Protection Bureau with researching, analyzing, and reporting on topics relating to the CFPB's mission including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. To improve its understanding of how consumers engage with financial markets, the CFPB has successfully used surveys under its ''Making Ends Meet'' program. The ''Making Ends Meet'' program has also used the CFPB's Consumer Credit Information Panel (CCIP) as a frame to survey people about their experiences in consumer credit markets. The CFPB seeks approval for two yearly surveys under the ''Making Ends Meet'' program. These surveys solicit information on the consumer's experience related to household financial shocks, particularly shocks related to the economic effects of the COVID–19 pandemic, how households respond to those shocks, and the role of savings to help provide a financial buffer.

The first survey will be a follow-up to respondents from the CFPB's 2023 ''Making Ends Meet'' survey to better understand household financial experiences dealing with medical debt as well as consumers' interactions with various financial products. The second survey will go to a new sample of consumers from the CCIP and will address several topics of interest to the CFPB possibly including the impact of natural disasters and other environmental events, credit shopping behavior, additional follow-up regarding debt collection, and the assessment of various fees throughout the financial services ecosystem.

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. 2024–06407 Filed 3–25–24; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; AmeriCorps Member Exit Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to revise an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 28, 2024.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to: AmeriCorps, Attention Dr. Andrea Robles, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Robles, Office of Evaluation and Research, (202) 510–6292, *arobles@americorps.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps Member Exit Survey.

OMB Control Number: 3045–0094.

Type of Review: Revision.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 80,000.

Total Estimated Number of Annual Burden Hours: 20,000.

Abstract: All members in the three AmeriCorps programs—AmeriCorps State & National, VISTA, and the National Civilian Community Corps (NCCC)—are invited to complete a questionnaire upon completing their service term. The questionnaire asks members about their motivations for joining AmeriCorps, experiences while serving, and future plans and aspirations. Completion of the questionnaire is not required to successfully exit AmeriCorps or to receive any stipends, education awards, or other benefits of service. The purpose of the information collection is to learn more about the member experience and

members' perceptions of their AmeriCorps experience so that AmeriCorps can improve the program. Members complete the questionnaire electronically through the AmeriCorps Member Portal. Members are invited to respond as their exit date nears and are allowed to respond for an indefinite period following the original invitation.

AmeriCorps seeks to revise the current information collection. The questionnaire submitted for clearance will be revised to change response options for one of the questions or to add a new question, as needed, to better obtain information on self-efficacy. AmeriCorps also seeks to continue using the currently approved information collection until the renewed information collection is approved by OMB. The current application expires on May 31, 2024.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2024–06262 Filed 3–25–24; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Program Life Cycle Evaluation—Puerto Rico Bundled Evaluation

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing a new information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 28, 2024.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method)

(2) By mail sent to: AmeriCorps, Attention Jehyra M. Asencio-Yace, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jehyra M. Asencio Yace, 202–956–9736, or by email at *jasencioyace@americorps.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps Program Life Cycle Evaluation—Puerto Rico Bundled Evaluation.

OMB Control Number: 3045–NEW.

Type of Review: New.

Respondents/Affected Public: Individuals and households (national service members, national service member alumni, community members), businesses and organizations (grantee and sponsor organization project director and staff, partner organization staff, non-supported organizations), and State, local, or Tribal governments (the Puerto Rico service commission staff).

Total Estimated Number of Annual Responses: 558 responses.

Total Estimated Number of Annual Burden Hours: 424 hours.

Abstract: The purpose of this evaluation is to provide insight on the context, implementation, and outcomes of 13 AmeriCorps-supported organizations in Puerto Rico with AmeriCorps State and National formula grants (funded through the Puerto Rico service commission, Comisión de Voluntariado y Servicio Comunitario), as well as those that have both AmeriCorps State and National grants and AmeriCorps VISTA projects. The evaluation will also explore the effectiveness of evaluation capacity-building workshops to be provided to the bundle participants.

AmeriCorps will conduct a 15-month-long bundled evaluation of grantees and sponsors in Puerto Rico. Bundling combines programs and projects in a similar place into a single evaluation. The bundled evaluation will use surveys, interviews, and focus groups with a wide range of stakeholders, including grantee and sponsor organization project directors and staff, national service members, national service member alumni, community members, partner organization staff, non-supported organizations, and the Puerto Rico service commission staff. This is a new information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2024–06313 Filed 3–25–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2024–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments,/ please write to United States Air Force Academy Admissions, 2304 Cadet Drive USAFA CO 80840, Steven Warner, 719–333–3070, *RROI_List@AFAcademy.AF.EDU.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USAFA Admissions Procedures; OMB Control Number 0701–AFAA.

Needs and Uses: USAFA Admissions Procedures implement the provisions of title 10 U.S.C. 9446. Information collection is necessary to evaluate background and aptitude for commissioned service. Data collected includes candidate's participation in extracurricular activities, family and personal background, and academic background. USAFA must also collect information necessary to verify eligibility for admission. Information collected allows the Admissions Committee to evaluate the ''whole person'' concept. Without this information it would be difficult to accurately determine if an initial applicant would be qualified to enter the candidate phase of the admissions process. It would also be difficult to accurately determine a candidate's leadership and academic abilities. Finally, USAFA Faculty would not be able to determine course entry programming for the cadet to succeed. Respondents are high school graduates and General Educational Development equivalent who are applying to USAFA. Acceptance is determined using the information provided by the students. There are multiple sections associated with this information collection. The information collected in these sections is required by title 10 U.S.C. 9446 and used by USAFA officials to select appointees to the Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 183,333.

Number of Respondents: 50,000.

Responses per Respondent: 1.

Annual Responses: 50,000.

Average Burden per Response: 220 minutes.

Frequency: Annually.

Dated: March 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06378 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2024–HQ–0005]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the USACE announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense

for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Institute for Water Resources, Navigation and Civil Works Decision Support Center, 7701 Telegraph Road, Alexandria, VA 22315–3868, ATTN: Steven D. Riley or call 703–428–6380.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Lock Performance Monitoring System Waterway Traffic Report; ENG Forms 3102C and 3102D; OMB Control Number 0710–0008.

Needs and Uses: The USACE utilizes the data collected to monitor and analyze the use and operation of federally owned or operated locks. General data of vessel identification, tonnage, and commodities are supplied by the master of vessels and all locks owned and operated by the USACE. The information is used for sizing and scheduling replacements, the timing of rehabilitation or maintenance actions, and the setting of operation procedures and closures for locks and canals. Respondents are vessel operators who provide the vessel identification, tonnage. and community information as stipulated on ENG Form 3012C, ''Waterway Traffic Report—Vessel Log'' or ENG Form 3102D, ''Waterway Traffic Report—Detail Vessel Log.'' The information is applied to navigation system management to identify and prioritize lock maintenance, rehabilitation, or replacement. It is also used to measure waterway performance and the level of service of the national waterway systems.

Affected Public: Business or other for-profit.

Annual Burden Hours: 23,504.

Number of Respondents: 6,529.

Responses per Respondent: 72.

Annual Responses: 470,088.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Dated: March 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06382 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0027]

Request for Information for 2026 Department of Defense (DoD) State Policy Priorities Impacting Service Members and Their Families

AGENCY: Deputy Assistant Secretary of Defense for Military Community and Family Policy, DoD.

ACTION: Request for information.

SUMMARY: This request for information provides an opportunity for the public to submit issues that have an impact on Service members and their families where state governments are the primary agents for making positive change. Each year, DoD selects State Policy Priorities for states to consider that represent barriers resulting from the transience and uncertainty of military life, and the public submissions will be considered by DoD in setting those priorities. For example, DoD has asked states to consider remedies to improve school transitions for children in active duty military families to overcome problems with records transfer, class and course placement, qualifying for extra-curricular activities, and fulfilling graduation requirements.

DATES: Consideration will be given to all submissions received by April 25, 2024.

ADDRESSES: You may submit information in response to this request, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Arunima Shukla, (571) 372–5335 (voice), *arunima.shukla.civ@mail.mil* (email), 4800 Mark Center Drive, Suite 14E08, Alexandria, Virginia 22350 (mailing address).

SUPPLEMENTARY INFORMATION: Current DoD State Policy Priorities may be found at the official Defense-State Liaison Office website: *https://statepolicy.militaryonesource.mil.*

Issues represent potential state policy priorities the public believes should be considered by the Department. The proposed solution should positively impact the quality of life of Service members and their families, positively contribute to readiness, or both. Inputs should include the following information:

A. Issue title.

B. Description of the issue to include a problem statement, and who is impacted by this issue.

C. Description of a potential solution to this issue, including whether the issue can be improved through a change in state procedures, state regulations, or state statutes.

D. Description of the current status of the issue, and a description of the policies or practices enacted by one or more state governments, if known.

E. Your contact information so that we can follow up if we need any clarification.

Dated: March 21, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06386 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0025]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on:

whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Under Secretary of Defense, Military Personnel Policy, 1500 Defense Pentagon, Washington, DC 20301–4000, Ronald Garner (703) 693–1059.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Combat Related Special Compensation Reconsideration Form; DD 2860; OMB Control Number 0704–CRSC.

Needs and Uses: This information collection requirement is necessary to obtain and record additional information for reconsideration into the Combat Related Special Compensation (CRSC) Program if the Service Member has been previously denied entry due to failure to meet program criteria. The CRSC program provides tax-free payments to retired Veterans with combat-related disabilities. The CRSC form is used by Uniformed Service retirees to claim benefits under the CRSC Program. Qualifications must be met and submitted to the retiree's parent Military Service for evaluation under program criteria. Each Service maintains a review board to evaluate claims. Retirees must provide information regarding their VA disability awards and the circumstances under which their disabilities were incurred. The form is used to gain and collect new and substantive documentation that supports the request of the Service Members qualifications for the CRSC Program.

Affected Public: Individuals or households.

Annual Burden Hours: 2,698.

Number of Respondents: 10,791.

Responses per Respondent: 1.

Annual Responses: 10,791.

Average Burden per Response: 15 minutes.

Frequency: As required.

Dated: March 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06377 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board (NSEB); Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the NSEB will take place.

DATES: Open to the public on Wednesday, April 3, 2024 from 9 a.m. to 3 p.m. eastern standard time (EST).

ADDRESSES: The meeting will be held at 1350 Eye Street NW, Washington, DC 22205.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Patz, (571) 329–3894 phone, or by email at (*alison.m.patz.civ@mail.mil*) for information about attending the meeting. National Security Education Program, 4800 Mark Center Drive, Suite 08G08, Alexandria, VA 22350–7000. Website: *https://dlnseo.org/Governance/NSEB.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and title 41 Code of Federal Regulations (CFR) section 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer (DFO) and the DoD, the NSEB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its April 3, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirements.

Purpose of the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, title VII of Public Law 102–183, as amended.

Agenda: Wednesday, April 3, 2024 from 9 a.m. to 3 p.m. the NSEB will begin an open session with opening remarks by Dr. Clare Bugary, the DFO, and the Honorable Shawn Skelly, Assistant Secretary of Defense for Readiness, who will Chair the meeting. The NSEB will receive a briefing on the NSEB Statutory Responsibilities and Program Updates. The meeting will continue with a mission highlight from Project Global Officer, followed by working group discussion. The meeting's final session will be an overview of the Boren Awards Alumni Survey. General discussion and closing remarks by the Chair and the DFO will adjourn the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Alison Patz at *alison.m.patz.civ@mail.mil* (email) or (571) 329–3894 (voice) no later than Tuesday, March 26, 2023, so that appropriate arrangements can be made.

Written Statements: This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 41 CFR 102–3.140 and sections 10(a)(3) of the FACA, the public or interested organizations may submit written statements to the NSEB about its mission and functions. Written statements may be submitted at

any time or in response to the stated agenda of the planned meeting. All written statements shall be submitted to the point of contact at the email address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section, and this individual will ensure that the written statements are provided to the membership for their consideration. Statements being submitted in response to the agenda items mentioned in this notice must be received by the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the NSEB until its next meeting.

Dated: March 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06369 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0026]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 28, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Under Secretary of Defense for Personnel Readiness (MPP–AFCB), 4000 Defense Pentagon (Rm. 2D583), Washington, DC 20301–4000, Ch, Col Dale E. Marlowe, (703) 697–9826.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Appointment of Chaplains for the Military Services; DD Form 2088; OMB Control Number 0704–0190.

Needs and Uses: This information collection is needed to ensure that religious faith groups are appropriately organized and authorized by their constituencies to endorse clergy for service as chaplains in the Military Services. It also certifies the number of years of professional experience for each candidate. DD Form 2088, ''Statement of Ecclesiastical Endorsement,'' is used to endorse that a Religious Ministry Professional is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promotion for appointees to the chaplaincies of the armed forces.

Affected Public: Individuals or households.

Annual Burden Hours: 1,125.

Number of Respondents: 150.

Responses per Respondent: 10.

Annual Responses: 1500.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

Dated: March 19, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06381 Filed 3–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0049]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Asian American and Native American Pacific Islander-Serving Institutions Program Applications (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), 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 25, 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 Pearson Owens, 202–987–1866.

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: Asian American and Native American Pacific Islander-Serving Institutions Program Applications (1894–0001).

OMB Control Number: 1840–0798.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 120.

Total Estimated Number of Annual Burden Hours: 9,000.

Abstract: This program provides grants and related assistance to Asian American and Native American Pacific Islander-serving institutions to enable such institutions to improve and expand their capacity to serve Asian Americans and Native American Pacific Islanders and low-income individuals. The information collection (1840–0798) for which we are seeking an extension includes the applications used to apply for grants under Part A and Part F.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: March 20, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–06283 Filed 3–25–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Center on Rigorous Comprehensive Education for Students With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On February 22, 2024, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2024 Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—National Center on Rigorous Comprehensive Education for Students with Disabilities, Assistance Listing Number 84.326C. The NIA established a deadline date of April 22, 2024, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until April 25, 2024, and extends the deadline for intergovernmental review until June 24, 2024.

DATES:

Deadline for Transmittal of Applications: April 25, 2024.

Deadline for Intergovernmental Review: June 24, 2024.

FOR FURTHER INFORMATION CONTACT: David Emenheiser, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0124. Email: *David.Emenheiser@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On February 22, 2024, we published the NIA in the **Federal Register** (89 FR 13315). The NIA established a deadline date of April 22, 2024, for the transmittal of applications. We are extending the deadline date for transmittal of applications, because the *Grants.gov* platform will be closed for site maintenance from April 20–23, 2024. Since applicants will be unable to submit applications or work in the *Grants.gov* system during that time, we are extending the deadline to allow applicants additional time to complete and submit their applications. Applicants that have submitted applications before the original deadline date of April 22, 2024, may resubmit their applications on or before the new application deadline date of April 25, 2024, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that was last successfully submitted and received by 11:59:59 p.m., eastern time, on April 25, 2024.

Note: All information in the NIA, including eligibility criteria, remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review. The NIA is available at *www.federalregister.gov/documents/2024/02/22/2024-03595/applications-for-new-awards-technical-assistance-and-dissemination-to-improve-services-and-results.*

Information about Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities is available on the Department's website at *https://www2.ed.gov/programs/oseptad/index.html.*

Program Authority: 20 U.S.C. 1463 and 1481.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–06376 Filed 3–25–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–88–000]

Rover Pipeline LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on March 8, 2024, Rover Pipeline LLC (Rover), 8111 Westchester Drive, Suite 600, Dallas, Texas 75225, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for its Rover-Bulger Delivery Meter Station Project (Project). The Project consists of a new pipeline delivery point interconnection that will be sited within the existing Rover-Bulger Compressor Station located at Milepost 0.0 of Rover's Burgettstown Lateral in Washington County, Pennsylvania. The Project will allow Rover to deliver up to 400,000 dekatherms per day of natural gas supplies to ETC Northeast Pipeline LLC's (ETC Northeast) existing cryogenic processing and fractionation facility (straddle plant) located within a quarter mile of the proposed delivery interconnect. Rover estimates the total cost of the Project to be $4,131,314 and proposes to charge customers for transportation service using the proposed interconnection under its existing, currently effective rates pursuant to its FERC Gas Tariff. Rover states that it is not proposing at this time any new or revised rates or fuel charges related to this Project, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions regarding the proposed project should be directed to Blair Lichtenwalter, Senior Director of Regulatory Affairs, 1300 Main Street, Houston, Texas 77002, by phone at (713) 989–2605 or by email at *blair.lichtenwalter@energytransfer.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on April 10, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

[1] 18 CFR (Code of Federal Regulations) 157.9.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before April 10, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–88–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–88–000).

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is April 10, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–88–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–88–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Blair Lichtenwalter, Senior Director of Regulatory Affairs, 1300 Main Street, Houston, Texas 77002 or by email at *blair.lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on April 10, 2024.

Dated: March 20, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06425 Filed 3–25–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER17–405–003; ER17–406–003; EL23–51–002.

Applicants: American Municipal Power, Inc., et al. v. AEP Appalachian Transmission Company Inc., et al., AEP Appalachian Transmission Company, Inc., Appalachian Power Company.

Description: American Power East Companies submit compliance filing as directed by the January 18, 2024 Order.

Filed Date: 3/18/24.

Accession Number: 20240318–5279.

Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–943–001.

Applicants: Cottontail Solar 5, LLC.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 1/31/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5053.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–978–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2024–03–20_SA 4228 GRE–OTP-Discovery Wind Sub Original GIA (S1036) to be effective 3/24/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5195.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1030–001.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Service Agreement No. 406, Amendment 3 Refile to be effective 3/30/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5106.
Comment Date: 5 p.m. ET 4/1/24.
Docket Numbers: ER24–1574–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6072; Queue No. AF2–293 to be effective 5/10/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5064.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1575–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Original NSA SA No. 7198, Queue No. AF1–130 to be effective 5/20/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5076.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1576–000.
Applicants: Maple Flats Solar Energy Center LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Authorization to be effective 3/21/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5094.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1577–000.
Applicants: Arizona Public Service Company.
Description: 205(d) Rate Filing: Rate Schedule No. 320, Babbitt Ranch Pseudo-Tie to be effective 5/20/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5099.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1578–000.
Applicants: Arizona Public Service Company.
Description: 205(d) Rate Filing: Service Agreement No. 419, E&P w/ Elisabeth Solar to be effective 3/11/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5112.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1579–000.
Applicants: Arizona Public Service Company.
Description: 205(d) Rate Filing: Administrative Filing for Collation Correction to be effective 3/20/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5121.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1580–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Double Run Solar LGIA Amendment Filing to be effective 3/6/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5127.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1581–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Kirkham Solar Farms I (Kirkham L&MA) LGIA Filing to be effective 3/8/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5129.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1582–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 4239 Little Blue Wind II GIA to be effective 3/12/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5143.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1583–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: Revisions to Att J to Reallocate Remaining ATRR for Byway Upgrades (RR 584) to be effective 6/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5166.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1584–000.
Applicants: Tucson Electric Power Company.
Description: 205(d) Rate Filing: Concurrence to PSE Rate Schedule No. 160 to be effective 5/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5172.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1585–000.
Applicants: California State University Channel Islands Site Authority.
Description: 205(d) Rate Filing: CSUCI–SA Settlement Agreement with Participants to be effective 2/1/2022.
Filed Date: 3/20/24.
Accession Number: 20240320–5182.
Comment Date: 5 p.m. ET 4/10/24.
Docket Numbers: ER24–1586–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2024–03–20_MISO Petition for a Prospective Tariff Waiver of SPP Tariff to be effective N/A.
Filed Date: 3/20/24.
Accession Number: 20240320–5193.
Comment Date: 5 p.m. ET 4/10/24.

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

Docket Numbers: RR24–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for approval of revisions to the NERC Rules of Procedure to address unregistered inverter-based resources.
Filed Date: 3/19/24.
Accession Number: 20240319–5204.
Comment Date: 5 p.m. ET 4/18/24.

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

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as

interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 20, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06427 Filed 3–25–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP24–534–000.
Applicants: UGI Sunbury, LLC.
Description: 4(d) Rate Filing: Annual Retainage Adjustment 2024 w/Waivers to be effective 4/1/2024.
Filed Date: 3/19/24.
Accession Number: 20240319–5131.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–535–000.
Applicants: Northwest Pipeline LLC.
Description: 4(d) Rate Filing: Non Conforming Service Agreement—Spotlight to be effective 4/1/2024.
Filed Date: 3/19/24.
Accession Number: 20240319–5171.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–536–000.
Applicants: Equitrans, L.P.
Description: 4(d) Rate Filing: Negotiated Rate Agreement—4/1/2024 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5016.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–537–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 3.20.24 Negotiated Rates—Emera Energy Services, Inc. R–2715–86 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5041.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–538–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 3.20.24 Negotiated Rates—Emera Energy Services, Inc. R–2715–87 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5046.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–539–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 3.20.24 Negotiated Rates—Koch Energy Services, LLC R–7755–05 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5049.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–540–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 3.20.24 Negotiated Rates—Koch Energy Services, LLC R–7755–06 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5052.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–541–000.
Applicants: Big Sandy Pipeline, LLC, Bobcat Gas Storage, East Tennessee Natural Gas, LLC, Egan Hub Storage, LLC, Garden Banks Gas Pipeline, LLC, Maritimes & Northeast Pipeline, L.L.C., Mississippi Canyon Gas Pipeline, L.L.C., Moss Bluff Hub, LLC, Nautilus Pipeline Company, L.L.C., NEXUS Gas Transmission, LLC, Sabal Trail Transmission, LLC, Saltville Gas Storage Company L.L.C., Southeast Supply Header, LLC, Steckman Ridge, LP, Texas Eastern Transmission, LP, Tres Palacios Gas Storage LLC, Algonquin Gas Transmission, LLC.
Description: Compliance filing: Big Sandy Pipeline, LLC submits tariff filing per 154.203: Enbridge (U.S.) Pipelines—LINK System Maintenance—Request for Waivers 2024 to be effective N/A.
Filed Date: 3/20/24.
Accession Number: 20240320–5058.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–542–000.
Applicants: Bear Creek Storage Company, L.L.C.
Description: Compliance filing: Annual Report on Operational Transactions 2024 to be effective N/A.
Filed Date: 3/20/24.
Accession Number: 20240320–5087.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–543–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 3–20–24 to be effective 3/20/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5100.
Comment Date: 5 p.m. ET 4/1/24.

Docket Numbers: RP24–544–000.
Applicants: Portland Natural Gas Transmission System.
Description: 4(d) Rate Filing: Northern Utliites Neg Rate Agreement #284292 to be effective 4/1/2024.
Filed Date: 3/20/24.
Accession Number: 20240320–5103.
Comment Date: 5 p.m. ET 4/1/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

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

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 20, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06426 Filed 3–25–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11849–01–OAR]

Notice of Denial of Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard (''AFPM Petition Denial Action''), in which EPA

denied a petition from the American Fuel & Petrochemical Manufacturers (AFPM) for a partial waiver of the 2023 cellulosic biofuel standard under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of, and the basis for, EPA's decision issued on March 15, 2024.

DATES: March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Lauren Michaels, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4640; email address: *michaels.lauren@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the volume requirements under the RFS program, in whole or in part, under specified circumstances, including when EPA finds that ''there is an inadequate domestic supply'' or that the RFS volume requirements ''would severely harm the economy or environment of a State, a region, or the United States'' (''severe economic harm'').[1] Section 211(o)(7)(A) is structured to allow any person subject to the requirements of the RFS program to petition EPA to waive, in whole or in part, the volume requirements.

On December 22, 2023, AFPM requested that EPA issue a partial waiver of the 2023 cellulosic biofuel standard under CAA section 211(o)(7)(D) and CAA section 211(o)(7)(A)(i).[2] On March 4, 2024, AFPM submitted an update to its original petition.[3]

II. Decision

Our assessment of the volume of 2023 cellulosic RINs and 2022 cellulosic carryover RINs indicates that obligated parties will be able to readily comply with the existing 2023 cellulosic biofuel standard. Moreover, obligated parties will still be able to comply by carrying a cellulosic RIN deficit into 2024, if necessary. On the other hand, a partial waiver of the 2023 cellulosic biofuel standard would be injurious to the RFS program because it would be disruptive to program participants and could result in reduced future demand for cellulosic biofuel production. For these and all other reasons described in the AFPM Petition Denial Action, and after consultation with the Secretary of Agriculture and the Secretary of Energy under CAA section 211(o)(7)(A), the RFS program is best served by maintaining the existing 2023 cellulosic biofuel standard and we are denying the AFPM Petition.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed only in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''any other nationally applicable. . .final action taken by the Administrator,'' or (ii) when a final action is locally or regionally applicable but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' The CAA reserves to EPA the complete discretion to decide whether to invoke the exception in (ii) described in the preceding sentence.[4]

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). Whether an action is ''nationally applicable'' is a narrow inquiry based only on the ''face'' of the action.[5] The question is whether the action itself is nationally applicable, not whether the nature and scope of the arguments raised or relief sought by a petitioner challenging the action are nationally applicable.[6] On its face, this final action is nationally applicable because it denies a petition to waive a portion of the nationally applicable 2023 cellulosic biofuel standard promulgated in the Set Rule for all parties who qualify as obligated parties[7] and thus are subject to the requirements of the RFS program no matter their location across the country. Parties that have registered with EPA as obligated parties under the RFS program are located in all states except Alaska, which is not subject to the RFS program.[8] In denying this petition, EPA applied a consistent interpretation of the relevant CAA provisions and the Agency's ''common, nationwide analytical method'' for evaluating the fuels available, the fuels market data, and the RIN data to determine whether a partial waiver is necessary to enable compliance with the 2023 cellulosic biofuel standard.[9] This final action applies equally to all obligated parties.

For these reasons, this final action is nationally applicable. Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by May 28, 2024.

Joseph Goffman,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2024–06375 Filed 3–25–24; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA refers to the authority in CAA section 211(o)(7)(A) as the ''general waiver authority.''

[2] AFPM, ''Petition for Partial Waiver of 2023 Cellulosic Biofuel Volumetric Requirements,'' December 22, 2023 (''AFPM Petition'').

[3] AFPM, ''AFPM's Petition for Partial Waiver of the 2023 Cellulosic Biofuel Volumetric Requirements—Update,'' March 4, 2024.

[4] *Sierra Club* v. *EPA,* 47 F.4th 738, 745 (D.C. Cir. 2022) (''EPA's decision whether to make and publish a finding of nationwide scope or effect is committed to the agency's discretion and thus is unreviewable''); *Texas* v. *EPA,* 983 F.3d 826, 834–35 (5th Cir. 2020).

[5] *Dalton Trucking, Inc.* v. *EPA,* 808 F.3d 875, 881 (D.C. Cir. 2015); *Hunt Refining Co.* v. *EPA,* 90 F.4th 1107, 1110 (11th Cir. 2024) (''*Hunt*'').

[6] *S. Ill. Power Coop.* v. *EPA,* 863 F.3d 666, 670–71 (7th Cir. 2017); *ATK Launch Sys., Inc.* v. *EPA,* 651 F.3d 1194, 1198–1199 (10th Cir. 2011); *RMS of Ga., LLC* v. *EPA,* 64 F.4th 1368, 1372–1373 (11th Cir. 2023); *Hunt,* 90 F.4th at 1110–1112.

[7] 40 CFR 80.2 (''obligated party''), 80.1406.

[8] CAA section 211(o)(2)(A)(i); 40 CFR 80.1407(f)(3).

[9] *S. Ill. Power,* 863 F.3d at 671; *ATK Launch Sys.,*651 F.3d at 1197; *Hunt,* 90 F.4th at 1112; *Oklahoma* v. *EPA,* ---; F.4th ---, 2024 WL 799356 at *3 (10th Cir. Feb. 27, 2024).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2023–0580; FRL–11359–01–OW]

Proposed Information Collection Request; Comment Request; POTW Influent PFAS Study Data Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request, ''U.S. Environmental Protection Agency POTW Influent PFAS Study Data Collection'' (EPA ICR No. 2799.01, OMB Control No. 2040–NEW) to the Office of Management and Budget 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 No. EPA–HQ–

OW–2023–0580, 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: Sean Dempsey, Engineering and Analysis Division, Office of Science and Technology, (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5088; email address: *Dempsey.Sean@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 the 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 Clean Water Act directs the United States Environmental Protection Agency to develop national regulations known as Effluent Limitations Guidelines and Standards (ELGs) to place limits on the pollutants that are discharged by categories of industry to surface waters and publicly owned treatment works (POTWs). In addition, the EPA conducts National Sewage Sludge Surveys (NSSSs) to collect national concentration data on contaminants found in sewage sludge and biosolids (sewage sludge treated to meet the requirements in 40 CFR part 503 and intended to be applied to land as a soil amendment or fertilizer), and to help inform future risk assessments and risk management options. For many decades, industrial facilities have used and discharged per- and polyfluoroalkyl substances to POTWs. PFAS are a class of synthetic chemicals of concern to the EPA because of their widespread use and potential to accumulate in the environment. Certain PFAS are known to cause adverse ecological and human health effects. Most POTWs do not operate processes and technologies that effectively reduce or eliminate PFAS in wastewater; therefore, PFAS are subsequently discharged into surface waters and/or accumulate in sewage sludge generated by the POTW which poses a potential risk for further PFAS release depending on sewage sludge management practices.

As announced in the EPA's Effluent Guidelines Program Plan 15, published in January 2023, the EPA is conducting a POTW Influent PFAS Study to collect and analyze nationwide data on industrial discharges of PFAS to POTWs as well as PFAS in POTW influent, effluent, and sewage sludge. The EPA will require, through an OMB-approved Information Collection Request, a subset of large POTWs across the United States to complete a questionnaire and collect and analyze wastewater and sewage sludge samples. The data collection activities will produce a robust data set that will enable the EPA to characterize the type and quantity of PFAS in wastewater discharges from industrial users to POTWs (including industrial categories that the EPA has determined historically or currently use PFAS but for which there is insufficient PFAS monitoring data available) as well as POTW influent, effluent, and sewage sludge. The wastewater sampling data will primarily be used to identify and prioritize industrial point source categories where additional study or regulations may be warranted to control PFAS discharges. The sewage sludge sampling will fulfill the EPA's data needs for the upcoming NSSS by establishing a current national data set of sewage sludge characteristics which the EPA will subsequently use to inform upcoming risk assessments and the need for future regulations and guidance pertaining to the management of sewage sludge.

This collection effort is necessary because there is only very limited publicly accessible data on PFAS discharges from industrial categories to POTWs; the relative PFAS contributions from residential, commercial, and industrial sources to POTWs; and the fate and transport of PFAS in POTW influent and sewage sludge. This collection effort is also consistent with the Agency's October 2021 PFAS Strategic Roadmap commitments to address PFAS through investment in scientific research to fill gaps in understanding of PFAS and to prevent PFAS from entering the environment.

As part of the POTW Influent PFAS Study, the EPA estimates that approximately 400 POTWs with the highest daily flow rates of all POTWs in the U.S. will complete a mandatory electronic questionnaire. The objectives of the questionnaire will be to gather POTW-specific information and data on industrial users discharging to the POTW, known or suspected sources of PFAS discharges to the POTW, and wastewater and sewage sludge management practices of the POTW. The EPA plans to use the information and data collected in the questionnaire to select a subset of 200 to 300 POTWs to participate in a two-phase sampling program. Phase 1 will require each selected POTW to collect and analyze one-time grab samples of industrial user effluent, domestic wastewater influent, POTW influent, and POTW effluent for forty specific PFAS and adsorbable organic fluorine (AOF). For each POTW selected, the EPA intends to specify no more than ten industrial users for which the POTW must collect and analyze effluent samples. The total number of industrial users sampled as part of the sampling program is not expected to exceed 2,000 facilities. Phase 2 will require selected POTWs to collect and analyze one-time grab samples of sewage sludge for forty specific PFAS and ancillary parameters.

Form Numbers: None.

Respondents/affected entities: 400 of the largest POTWs in the nation will receive the questionnaire (400 facilities)

and a subset of 200–300 facilities will be asked to conduct specific sampling, conducted in two phases.

Respondent's obligation to respond: Mandatory (Clean Water Act Section 308) (citing authority).

Estimated number of respondents: 400 (total).

Frequency of response: One-time data collection.

Total estimated respondent burden: 25,640 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated respondent cost: $5,486,816 one-time cost.

Changes in estimates: This is a new data collection request and is a one-time temporary increase to the agency's burden.

Deborah G. Nagle,

Director, Office of Science and Technology, Office of Water.

[FR Doc. 2024–06408 Filed 3–25–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0931; FR ID 209963]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 28, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0931.

Title: Section 80.103, Digital Selective Calling (DSC) Operating Procedures—Maritime Mobile Identity (MMSI).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities and Federal Government.

Number of Respondents and Responses: 40,000 respondents; 40,000 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is in 47 U.S.C. 154, 303, 307(e), 309 and 332 of the Communications Act of 1934, as amended. The reporting requirement is contained in international agreements and ITU–R M.541.9.

Total Annual Burden: 10,000 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collected is necessary to require owners of marine VHF radios with Digital Selective Calling (DSC) capability to register information such as the name, address, type of vessel with a private entity issuing marine mobile service identities (MMSI). The information would be used by search and rescue personnel to identify vessels in distress and to select the proper rescue units and search methods.

The requirement to collect this information is contained in international agreements with the U.S. Coast Guard and private sector entities that issue MMSI's.

The information is used by private entities to maintain a database used to provide information about the vessel owner in distress using marine VHF radios with DSC capability. If the data were not collected, the U.S. Coast Guard would not have access to this information which would increase the time and effort needed to complete a search and rescue operation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–06305 Filed 3–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 210779]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before May 28, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–XXXX.

Title: Participation Information Collection for the IoT Labeling Program.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 312 respondents; 3,130 responses.

Estimated Time per Response: 14 hours.

Frequency of Response: One-time; On occasion; Recordkeeping and Annual reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this collection is contained in sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g–3a to 278g–3e.

Total Annual Burden: 42,700 hours.

Total Annual Cost: No Cost.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) to obtain a full three-year clearance. The collection will advance the public interest and safety because it is the basis for the Commission's IoT Labeling Program, which will provide consumers with an easy-to-understand and quickly recognizable FCC IoT Label that includes the U.S. government certification mark (referred to as the Cyber Trust Mark) that provides assurances regarding the baseline cybersecurity of an IoT product, together with a QR code that directs consumers to a registry with specific information about the product. This collection will help consumers make better purchasing decisions, raise consumer confidence with regard to the cybersecurity of the IoT products they buy to use in their homes and their lives, and encourage manufacturers of IoT products to develop products with security-by-design principles in mind. In addition, consumers who purchase an IoT product that bears the FCC IoT Label can be assured that their product meets the minimum cybersecurity standards of the IoT Labeling Program, which in turn will strengthen the chain of connected IoT products in their own homes and as part of a larger national IoT ecosystem. In addition, the Order estimates that the program will save consumers at least $60 million annually from reduced time spent researching cybersecurity features of potential purchases.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–06309 Filed 3–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 12–108; DA 24–276; FR ID 210326]

Joint Closed Captioning Display Settings Proposal

AGENCY: Federal Communications Commission.

ACTION: Notice, request for comments.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission seeks comment on a joint proposal in the record of this proceeding addressing how the Commission should determine if specific closed captioning display settings are readily accessible.

DATES: Comments are due on or before April 15, 2024; reply comments are due on or before April 25, 2024.

ADDRESSES: You may submit comments, identified by MB Docket No. 12–108, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020).

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 24–276, released on March 19, 2024. The full text of this document is available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat via ECFS and at *https://www.fcc.gov/document/media-bureau-seeks-comment-joint-caption-display-settings-proposal.*

In 2015, the Commission proposed rules that would require manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing.[1] In January 2022, the Media Bureau released a public notice seeking to refresh the record on the proposals contained in the *Second FNPRM.*[2] In January 2023, the Media Bureau released a public notice seeking comment on a proposal by a coalition of consumer groups that when the Commission determines if specific closed captioning display settings are readily accessible, it should consider the following factors: proximity, discoverability, previewability, and

[1] *Accessibility of User Interfaces, and Video Programming Guides and Menus,* Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 81 FR 5971 (Feb. 4, 2016) (*Second FNPRM*).

[2] *See Accessibility Rules for Closed Captioning Display Settings,* 87 FR 2607 (Jan. 18, 2022) (*2022 Closed Captioning Display Settings PN*).

consistency and persistence.[3] Comments were due March 3, 2023, and reply comments were due March 20, 2023. The Joint Proposal states that the Organizations subsequently worked together to develop solutions to concerns raised in the record, and the result is the Joint Proposal.

Under the Joint Proposal, all accessibility functions would be made available ''in one area of the settings . . . accessed via a means reasonably comparable to a button, key, or icon.'' There would be consumer testing requirements ''[f]or cable service and navigation devices used to access multichannel video programming that cable operators sell or lease,'' as well as previewability requirements for cable service. For navigation devices, cable operators would commit to making closed caption display settings available by an application programming interface (API) that an over-the-top application provider could utilize. For a cable operator's own application on a third-party device, the operator would ''respect the operating system-level closed caption settings of the host device upon launch of the app on the device, provided the host device makes those settings available to applications via an API or similar method.'' Finally, cable operators would commit to certain training requirements for customer care and support employees. All of these proposals would be ''subject to being achievable and technically feasible,'' and they would apply ''on a going-forward basis'' and ''after a reasonable implementation period.'' While the proposals were framed in terms of NCTA's cable operator members, the Organizations note that ''the proposals could also serve as a model for other MVPDs and equipment manufacturers.''

We believe that the Commission would benefit from further comment on the Joint Proposal, and accordingly, this public notice seeks comment on whether the Commission should adopt the proposed requirements discussed therein. Interested parties should focus their comments on the specific issue of whether, if the Commission adopts rules governing the accessibility of closed captioning display settings, it should adopt the Organizations' proposals as rules. Although the Joint Proposal was focused on the cable context, should the requirements set forth in the Joint Proposal apply broadly to the devices covered by section 303(u) of the Communications Act of 1934, as amended, and to both manufacturers of covered apparatus and MVPDs? Commenters should provide any other information relevant to the Commission's determination of whether and how to adopt the Joint Proposal.

Initial Regulatory Flexibility Analysis. The *Second FNPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. The Media Bureau invites parties to file comments on the IRFA in light of this request for further comment.

Ex Parte Rules. This matter shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements. All filings responsive to the public notice must reference MB Docket No. 12–108. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2024–06306 Filed 3–25–24; 8:45 am]

BILLING CODE 6712–01–P

[3] *See Closed Captioning Display Settings Proposal,* 88 FR 6725 (Feb. 1, 2023) (*2023 Closed Captioning Display Settings PN*).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 210176]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 25, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the

above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Safe Connections Act—Supporting Survivors of Domestic and Sexual Violence, WC Docket No. 22–238, et al.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities and individuals or households.

Number of Respondents and Responses: 1,650,000 respondents; 1,650,000 responses.

Estimated Time per Response: 1 hour–240 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in 47 U.S.C. 345 of the Communications Act of 1934.

Total Annual Burden: 3,527,500 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Safe Connections Act of 2022 (SCA) obligates the Commission to implement rules pursuant to Section 4 of the SCA, which sets forth the requirement that covered providers separate the mobile phone telephone lines of domestic violence survivors (and of those persons in their care) from a shared mobile service contract with an abuser within two business days of a request. To implement the line separation process, the Commission establishes this collection, which requires covered providers to notify consumers about the availability of the line separation process and requires survivors to submit certain information to covered providers to request a line separation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–06302 Filed 3–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 11:30 a.m. on Thursday, March 21, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Rohit Chopra (Director, Consumer Financial Protection Bureau) seconded by Director Michael J. Hsu (Acting Comptroller of the Currency), and concurred in by Chairman Martin J. Gruenberg, Vice Chairman Travis J. Hill, and Director Jonathan P. McKernan, 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), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A), (c)(9)(B) and (c)(10)).

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 this the 21st day of March, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–06434 Filed 3–22–24; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension and Modification

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has clearance from the Office of Management and Budget (''OMB'') to send information requests, pursuant to compulsory process, to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought includes, among other things, data on the manufacturers' annual sales and marketing expenditures for cigarettes, smokeless tobacco products, and electronic devices used to heat non-combusted cigarettes, and sales of tobacco-free nicotine lozenges and pouches. The current OMB clearance expires on August 31, 2024. The Commission plans to ask OMB for renewed three-year clearance to collect this information, and to modify its existing clearance to allow for the

collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies.

DATES: Comments must be filed by May 28, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Tobacco Reports; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mailstop CC–10507, Washington, DC 20580, (202) 326–2699.

SUPPLEMENTARY INFORMATION:

Title: FTC Cigarette and Smokeless Tobacco Data Collection.

OMB Control Number: 3084–0134.

Type of Review: Revision and extension of currently approved collection.

Likely Respondents: Parent companies of the largest cigarette companies and smokeless tobacco companies.

Estimated Annual Burden Hours: 3,540 disclosure hours.

Estimated Annual Labor Costs: $407,100.

Abstract: Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on sales and/or marketing of cigarettes, smokeless tobacco products, tobacco-free nicotine lozenges and pouches, and electronic devices used to heat non-combusted cigarettes (collectively, ''subject products'') from manufacturers of cigarettes and smokeless tobacco products. Depending on the type of product a manufacturer produces, the Commission requests the information using two different instruments—that is, a Cigarette Order and a Smokeless Tobacco Order. The Commission compiles and publishes the data in two periodic reports.

Using compulsory process under section 6(b) of the FTC Act, the Commission plans to continue sending information requests annually to the ultimate parent companies of the largest cigarette companies and smokeless tobacco companies in the United States (collectively, ''industry members''). The information requests will seek data regarding, among other things: (1) the cigarette or smokeless tobacco sales of industry members; (2) how much industry members spend advertising and promoting their cigarette or smokeless tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their cigarette or smokeless tobacco products or brand imagery in television shows, motion pictures, on the internet, or on social media; (4) how much industry members spend on advertising intended to reduce youth cigarette or smokeless tobacco usage; (5) the events, if any, during which industry members' cigarette or smokeless tobacco brands are televised; and (6) how much industry members spend on public entertainment events promoting their companies but not specific cigarette or smokeless tobacco products or such products generally. The information requests will also seek information from the cigarette companies pertaining to the annual sales, give aways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products.

While, in previous years, the information requests only sought information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches, the Commission plans to seek a modification of its existing clearance in order to collect information concerning advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches. The need to collect this information is predicated upon the fact that sales of tobacco-free nicotine lozenges and pouches more than doubled between 2020 and 2022, and these products appear to be especially popular with youth.

The current PRA clearance to collect this information is valid through August 31, 2024 (OMB Control No. 3084–0134). As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB renew the clearance for the PRA burden associated with the proposed collection, and the proposed modification.

Burden Statement

Estimated Annual Burden Hours: 3,540.

The FTC staff's estimated hours of burden is based on the time required each year to respond to the Commission's information requests. Because the potential recipients of the information requests vary greatly in size, the number of products they sell, and the extent and variety of their advertising and promotion, FTC staff distinguishes between the four largest industry members and smaller industry members for the purpose of calculating the estimated annual burden hours. This burden analysis first discusses the burden hours that industry members will incur in providing information on their sales and marketing expenditures for cigarettes and smokeless tobacco products.

Requests for Information on Cigarettes and Smokeless Tobacco: For the information requests on the sales and marketing expenditures for cigarettes and smokeless tobacco products, the Commission currently anticipates sending information requests to the four largest cigarette companies and the five largest smokeless tobacco companies each year. However, in order to take into account any future industry changes, the burden estimate is based on up to 15 information requests being issued per year. The Commission assumes that six of the 15 information requests will be issued to the four largest industry members, and the remaining nine information requests will be issued to nine smaller industry members.[1]

FTC staff estimates that each of the four largest industry members will incur, on average, a burden of 400 hours per response per year, resulting in a cumulative burden of approximately 2,400 hours per year (6 requests × 400 hours per year). Additionally, FTC staff estimates that the remaining nine smaller recipients of the Commission's information requests will each incur, on average, a burden of 60 hours per request per year, resulting in a cumulative burden of approximately 540 hours per year (9 requests × 60 hours).

Accordingly, FTC staff estimates that, for the purpose of providing information on their sales and marketing for cigarettes and smokeless tobacco products industry members will incur a cumulative burden of approximately 2,940 hours per year (2,400 hours per year + 540 hours per year).

Requests for Information on Tobacco-Free Nicotine Lozenges and Pouches: In the past, the Commission's Smokeless Tobacco Orders have also sought

[1] Based on their product variety, two of the four largest industry members receive both a Cigarette Order and a Smokeless Tobacco Order.

information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches by the smokeless tobacco manufacturers or related companies. The Commission is proposing to amend its existing OMB clearance to also collect data on smokeless tobacco manufacturers' annual advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches. FTC staff estimates that, as a result of this modification, the Commission will seek this information from the five largest smokeless tobacco manufacturers each year. However, in order to take into account any future industry changes, the burden estimate is based on up to five additional information requests being issued per year to smokeless tobacco companies that sell, or have related companies that sell, tobacco-free nicotine lozenges and pouches.

FTC staff estimates that each of the ten recipients will incur, on average, a burden of 50 hours per request per year. Accordingly, FTC staff estimates that, for the purpose of providing information on the sales and marketing expenditures for tobacco-free nicotine lozenges and pouches, the recipients will incur a cumulative burden of approximately 500 hours per year (10 requests × 50 hours per year).

Requests for Information on Devices to Heat Non-Combusted Cigarettes: The Commission's Cigarette Orders have also sought sales and marketing expenditure information for electronic devices used to heat non-combusted cigarettes. At this time, there is no longer any industry member that sells such devices in the United States, but FTC staff anticipates that at least one of the four largest industry members will re-enter this market segment over the next three years. FTC staff assumes that, as a result of the Commission's information requests, it will take any of the largest cigarette companies that sell electronic devices used to heat non-combusted cigarettes approximately 25 hours per year to compile the information on their sales and marketing expenditures for such devices, and that as many as four of the largest industry members may sell such devices, for a possible burden of 100 hours (4 requests × 25 hours per year).

Accordingly, FTC staff estimates that, as a result of the Commission's requests for information on sales and marketing for the subject products, market participants will incur a cumulative burden of approximately 3,540 hours per year (2,940 hours per year + 500 hours per year + 100 hours per year). This estimate includes any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that receives the information request.

Estimated Annual Cost Burden: $407,100.

FTC staff cannot calculate with precision the labor costs associated with this data production, as those costs entail varying compensation levels of management and/or support staff among companies of different sizes. FTC staff assumes that paralegals and computer analysts will perform most of the work involved in responding to the Commission information requests, although in-house legal personnel will be involved in reviewing the actual submission to the Commission. FTC staff will use a combined hourly wage of $115/hour for the combined efforts of these individuals.[2] Using this figure, FTC staff's best estimate for the total annual labor costs is $407,100 per year ($115 per hour × 3,540 hours).

Estimated Capital or Other Non-Labor Cost: De minimis.

FTC staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

Request for Comment

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before May 28, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Tobacco Reports; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any 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 that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at

[2] FTC staff believes that this estimate is conservative. According to data from the Bureau of Labor Statistics, the mean hourly wages for these three occupations are as follows: $30.21 for paralegals; $53.15 for computer and information analysts; and $78.74 for lawyers. Economic News Release, Bureau of Labor Statistics, Table 1—National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022 (Table 1), available at *http://www.bls.gov/news.release/ocwage.t01.htm.* Even if employees of the major cigarette and smokeless tobacco manufacturers earn more than these hourly wages, FTC staff believes its $115/hour estimate is appropriate.

www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 28, 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.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–06350 Filed 3–25–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in the rules and regulations under the Fur Products Labeling Act (''Fur Rules'' or ''Rules''). That clearance expires on October 31, 2024.

DATES: Comments must be filed by May 28, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fur Rules; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2984.

SUPPLEMENTARY INFORMATION:

Title of Collection: Rules and Regulations under the Fur Products Labeling Act, 16 CFR part 301.

OMB Control Number: 3084–0099.

Type of Review: Extension without change of currently approved collection.

Abstract: The Fur Products Labeling Act (''Fur Act'') [1] prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

Likely Respondents: Retailers, manufacturers, processors, and importers of furs and fur products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated Annual Burden Hours: 180,639 hours (45,720 hours for recordkeeping + 134,919 hours for disclosure).

Recordkeeping: 45,720 hours [500 retailers incur an average recordkeeping burden of about 18 hours per year (9,000 hours total); 137 manufacturers incur an average recordkeeping burden of about 60 hours per year (8,220 hours total); and 950 importers of furs and fur products incur an average recordkeeping burden of 30 hours per year (28,500 hours total)].

Disclosure: 134,919 hours [(114,886 hours for labeling + 33 hours for invoices + 20,000 hours for advertising)].

Estimated Annual Cost Burden: $3,555,329 (rounded to the nearest whole dollar amount).

As required by section 3506©(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Fur Rules.

Burden Statement

FTC staff's burden estimates are based on data from the Department of Labor's Bureau of Labor Statistics (BLS) and data or other input from the Fur Industry Council of America. The relevant information collection requirements in these Rules and FTC staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements.

The Fur Act [2] prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

Estimated Annual Hours Burden: 180,639 hours (45,720 hours for recordkeeping + 134,919 hours for disclosure).

Recordkeeping: The Fur Rules require that retailers, manufacturers, processors, and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. FTC staff estimates that: (1) 500 retailers incur an average recordkeeping burden of about 18 hours per year (9,000 hours total); (2) 137 manufacturers incur an average recordkeeping burden of about 60 hours per year (8,220 hours total); and (3) 950 importers of furs and fur products incur an average recordkeeping burden of 30 hours per year (28,500 hours total). The combined recordkeeping burden for the industry is approximately 45,720 hours annually.

Disclosure: FTC staff estimates that 637 respondents (137 manufacturers + 500 retail sellers of fur garments) each require an average of 30 hours per year to determine label content (19,110 hours total), and an average of 30 hours per year to draft and order labels (19,110 hours total). FTC staff estimates that the total number of garments subject to the fur labeling requirements annually is approximately 1,840,000.[3] FTC staff estimates that for approximately 50 percent of these garments (920,000) labels are attached manually, requiring approximately four minutes per garment for a total of 61,333 hours annually. For the remaining 920,000, the process of attaching labels is semi-automated and requires an average of approximately one minute per item, for a total of 15,333 hours. Thus, the total burden for

[1] 15 U.S.C. 69 *et seq.*

[2] *Id.*

[3] This estimate is half the prior estimate. FTC staff bases this estimate on an assessment that the overall market for fur products appears to have halved. For example, the number of fur retailers has declined from 950 to 500. The total number of imported fur garments, fur-trimmed garments, and fur accessories is 3,562,242 annually based on U.S. government import statistics for Harmonized Tariff Schedule (HTS) Number 4303. However, this figure includes many products that contain fur but are not covered by the Fur Act and Rules, such as rabbit feet, or purses with fur. Estimated domestic production totals 90,000.

attaching labels is 76,666 hours, and the total burden for labeling garments is 38,220 hours per year (19,110 hours to determine label content + 19,110 hours to draft and order labels).

FTC staff estimates that the incremental burden associated with the Fur Rules' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in the absence of the Rules, is approximately one minute per invoice for pelts.[4] The invoice disclosure requirement applies to fur pelts, which are generally sold in groups of at least 1100, on average. Based on information from the Fur Industry Council of America, staff estimates total sales of 2,156,491 pelts annually. Thus, the invoice disclosure requirement entails an estimated total burden of 33 hours (1,960 total invoices × one minute).

FTC staff estimates that the Fur Rules' advertising disclosure requirements impose an average burden of 40 hours per year for each of the approximately 500 domestic fur retailers, or a total of 20,000 hours.

Thus, FTC staff estimates the total disclosure burden to be approximately 134,919 hours.

Estimated Annual Cost Burden: $3,555,329 (rounded to the nearest whole dollar amount). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor costs
Determine label content	[5] $31.49	19,110	$601,773.90
Draft and order labels	[6] 20.46	19,110	390,990.60
Attach labels	[7] 13.00	76,666	996,658.00
Invoice disclosures	[8] 20.46	33	675.18
Prepare advertising disclosures	[9] 31.49	20,000	629,800.00
Recordkeeping	[10] 20.46	45,720	935,431.20
Total	.....	.....	3,555,328.88

FTC staff believes that there are no current start-up costs or other capital costs associated with the Fur Rules. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and Rules would be included on the product label even absent the Rules. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Rules.

Request for Comment

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before May 28, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Fur Rules; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any 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 that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment

[4] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Rules, in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

[5] The wage rate for supervisors of office and administrative support workers is based on data through May 2022 from the Bureau of Labor Statistics Occupational Employment Statistics Survey at *https://www.bls.gov/news.release/ocwage.htm* (released on April 25, 2023).

[6] The wage rate for correspondence clerks is based on recent data from the Bureau of Labor Statistics Occupational Employment Statistics Survey at *https://www.bls.gov/news.release/ocwage.htm*.

[7] Per industry sources, most fur labeling is done in the United States. This rate is reflective of an average domestic hourly wage for such tasks performed in the United States, which is derived from recent BLS statistics.

[8] *See supra* note 6.

[9] *See supra* note 5.

[10] *See supra* note 6.

has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 28, 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.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–06354 Filed 3–25–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in the Fair Packaging and Labeling Act regulations (''FPLA Rules''). That clearance expires on May 31, 2024.

DATES: Comments must be filed by April 25, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. 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: Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC–9543, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2984.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations Under Section 4 of the Fair Packaging and Labeling Act (FPLA), 16 CFR parts 500–503.

OMB Control Number: 3084–0110.

Type of Review: Extension without change of currently approved collection.

Abstract: The Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.,* was enacted to enable consumers to obtain accurate package quantity information to facilitate value comparisons and prevent unfair or deceptive packaging and labeling of consumer commodities. Section 4 of the FPLA requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of the company responsible for the product. The FPLA regulations, 16 CFR parts 500–503, specify how manufacturers, packagers, and distributors of ''consumer commodities'' must comply with the Act's labeling requirements.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 7,436,580.

Estimated Annual Labor Costs: $188,799,893.

Estimated Annual Non-Labor Costs: $0.

Request for Comment: On August 30, 2023, the FTC sought public comment on the information collection requirements contained in the FPLA Rules. 88 FR 59925 (Aug. 30, 2023). No relevant comments were received during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 88 FR 59925.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone'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 ensuring that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential''—as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–06355 Filed 3–25–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements pertaining to the Commission's administrative activities, consisting of: responding to applications to the Commission pursuant to the Commission's Rules of Practice (Parts 1 and 4); the FTC's consumer reporting systems; and the FTC's program evaluation activities. The current clearance expires on June 30, 2024.

DATES: Comments must be filed by May 28, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Administrative Activities, PRA Comment, P085405,'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the

General Counsel, Federal Trade Commission, (202) 326–3355, *rgold@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: FTC Administrative Activities.

OMB Control Number: 3084–0169.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 1,414,080 hours.

Estimated Annual Labor Costs: $21,600.

Discussion

Pursuant to its Rules of Practice, the Commission collects information to carry out its administrative responsibilities. For example, any person, partnership, or corporation may request advice from the Commission or FTC staff regarding a course of action the requester contemplates. The Commission's rules require requesters to provide the information necessary to facilitate resolution of the requests, including information on the question to be resolved, the identity of the companies or persons involved, and other material facts. *See* FTC Rule 1.2, 16 CFR 1.2. As another example, the FTC's ethics regulations require former employees who are seeking ethical clearance to participate in FTC matters to submit screening affidavits to facilitate resolution of their requests. *See* FTC Rule 4.1(b), 16 CFR 4.1(b). Requests to participate must include, among other things, a description of the proceeding in which participation is contemplated; the name of the Commission office or division in which the former employee was employed and the position the employee occupied; and a statement whether, while employed by the Commission, the former employee participated in any proceeding or investigation concerning the same company, individual, or industry currently involved in the matter in question. These requirements prevent the improper use of confidential nonpublic information acquired while working at the FTC. The Commission's Rules of Practice also authorize outside parties to request employee testimony, through compulsory process or otherwise, and to request documentary material through compulsory process in cases or matters to which the agency is not a party. *See* FTC Rule 4.11(e), 16 CFR 4.11(e). These rules require persons seeking testimony or material from the Commission to submit a statement in support of the request setting forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources.

The Commission receives approximately 60 such requests annually. Staff estimates respondents will incur, on average, approximately 2 hours of burden to submit a request, resulting in a cumulative 120 burden hours per year (60 requests × 2 burden hours). Based on an estimated average wage of $150/hour for executive and attorney wages, staff estimates a total annual cost burden of $18,000 (120 hours × $150). Staff estimates that requesters would incur no capital, start-up, operation, maintenance, or other similar costs associated with submitting covered requests.

The FTC also allows consumers to report fraud, identity theft, National Do Not Call Registry violations, and other violations of law through telephone hotlines and three online consumer report forms. Consumers may call a hotline phone number or log on to the FTC's website to report violations using the applicable reporting forms. The provision of this information is voluntary. The FTC also conducts customer satisfaction surveys regarding the support that the Commission's Consumer Response Center provides to consumers to obtain information about the overall effectiveness of the call center and online complaint intake forms. This information assists Bureau of Consumer Protection staff in carrying out the agency's consumer protection mission. The FTC is also mandated by Congress under the Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. 1001 *et seq.,* to serve as the central clearinghouse for identity theft complaints.

As shown below this paragraph, the time necessary to file a consumer report or participate in related customer satisfaction surveys will vary. FTC staff estimates approximately 9,705,304 respondents will annually submit information pursuant to these processes. The time that each respondent will need to spend will depend on the type of consumer report being filed or the type of survey being filled out, as well as the method of participation (phone, online, web chat). Aggregated across the different types of activities, FTC staff estimates that the associated burden will be 1,413,936 hours per year over the course of the three-year clearance. The cost per respondent to file a complaint is negligible. Participation is voluntary and will not require any labor expenditures by respondents. In addition, there are no capital, start-up, operation, maintenance, or other similar costs for respondents.

Activity	Number of respondents	Number of minutes/ activity	Total hours
Misc. and fraud-related consumer complaints (phone)	476,175	8.7	69,045
Identity theft complaints (phone)	293,597	7.2	35,232
CRC Customer Satisfaction Questionnaire (phone)	13,376	4.3	959
CRC Customer Satisfaction Questionnaire (online)—*ReportFraud.ftc.gov*	22,241	3.1	1,149
CRC Customer Satisfaction Questionnaire (online)—*IdentityTheft.gov*	4,728	3.1	244
Misc. and fraud-related consumer complaints (online)	4,364,003	5.16	375,304
Identity theft complaints (online)	3,119,075	9.8	509,449
Misc. and fraud-related consumer complaints (Web chat)	77,614	5.57	7,205
Identity theft complaints (Web chat)	104,282	4.6	7,995
Misc. and fraud-related consumer complaints (Live Web chat)	3,950	9.6	632
Identity theft complaints (Live Web chat)	23,934	9.9	3,949
Do-Not-Call related consumer complaints (phone)	1,022,325	3	51,116
Do-Not-Call related consumer complaints (online)	8,473,199	2.5	353,050
Totals	9,705,304	.....	1,413,936

The FTC also conducts evaluations of the effectiveness of its merger divestiture orders. Following an order of divestiture in a merger matter, the FTC's Bureau of Competition's Compliance Division conducts brief calls with

acquirers of divested assets to assess the effectiveness of these divestitures. In 2023, 2022, and 2021, the Commission issued 9, 14, and 6 orders, respectively, and a few required divestitures. For interviews with purchasers of divested assets, each interview typically takes less than one hour to complete. FTC staff estimates that it takes each participant no more than one hour to prepare for the interview. Accordingly, staff estimates that, for each interview, two individuals (typically a company executive and an attorney) will devote two hours each (one hour preparing and one hour participating) to responding to questions for a total of four hours. Assuming that staff evaluates approximately 4 divestitures per year during the three-year clearance period, staff estimates that the total hours burden will be 16 hours per year (4 divestiture reviews × 4 hours for preparing and participating). Staff may include approximately two monitor interviews a year, which would add at most 4 hours (2 interviews × 2 hours for preparing and participating). Interviews of monitors typically involve only the monitor and take approximately one hour to complete with no more than one hour to prepare for the interview. At most, this yields a total burden of 24 burden hours per year. Staff estimates that the total annual labor cost, based on an estimated average of $150/hour for executive and attorney wages, would be $3,600 (24 hours × $150). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before May 28, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Administrative Activities, PRA Comment, P085405,'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any 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 that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 28, 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.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–06351 Filed 3–25–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 20–280, Cooperative Research Agreements Related to the World Trade Center Health Program (U01); RFA–OH–24–002, Exploratory/Developmental Grants on Lifestyle Medicine Research Related to the World Trade Center Health Program (R21); RFA–OH–24–003, Exploratory/Developmental Grants Related to the World Trade Center Survivors (R21—No Applications With Responders Accepted); and RFA–OH–24–004, World Trade Center Health Program Mentored Research Scientist Career Development Award (K01); Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 20–280, Cooperative Research Agreements Related to the World Trade Center Health Program (U01); RFA–OH–24–002, Exploratory/Developmental Grants on Lifestyle Medicine Research Related to the World Trade Center Health Program (R21); RFA–OH–24–003, Exploratory/Developmental Grants Related to the World Trade Center Survivors (R21—No Applications with Responders Accepted); and RFA–OH–24–004, World Trade Center Health Program Mentored Research Scientist Career Development Award (K01); March 19–21, 2024, 11 a.m.–6 p.m., EDT, video-assisted meeting, in the original **Federal Register** notice. The

meeting notice was published in the **Federal Register** on December 20, 2023, Volume 88, Number 243, pages 88082–88083.

This meeting is being canceled in its entirety.

FOR FURTHER INFORMATION CONTACT: Laurel Garrison, M.P.H., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 5555 Ridge Avenue, Cincinnati, Ohio 45213. Telephone: (513) 533–8324; Email: *LGarrison@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–06304 Filed 3–25–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7074–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) In-Person Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, April 18, 2024 from 12 p.m. to 5 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments: Thursday, April 4, 2024 5 p.m. (EDT).

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Walt Gutowski, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–04–08, Baltimore, MD 21244–1850, 410–786–6818, or via email at *APOE@cms.hhs.gov.*

Registration: Persons wishing to attend this meeting must register at the website *https://CMS-APOE-April2024.rsvpify.com* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Walt Gutowski, Designated Federal Official, Office of Communications, 7500 Security Boulevard, Mailstop S1–04–08, Baltimore, MD 21244–1850, 410–786–6818, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of Federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel, which was first chartered in 1999, advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and laws. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the Federal Government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs regarding these programs, including public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP,

and the Health Insurance Marketplace® education programs and other CMS programs as designated.

• Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.

• Building and leveraging existing community infrastructure for information, counseling, and assistance.

• Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of February 1, 2024 are as follows:

• Mitchell Balk, President, The Mt. Sinai Health Foundation.

• Paula Campbell, Director of Health Equity and Emergency Response, Illinois Primary Care Association.

• Andrea Haynes, MD, Family Medicine Physician, PPC Austin Family Health Center.

• Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.

• Vacheria Keys, Director of Policy and Regulatory Affairs, National Association of Community Health Centers.

• Daisy Kim, Assistant Director for Government Relations and Legislative Analysis, University of California System.

• Lynn Kimball, Executive Director, Aging and Long-Term Care of Eastern Washington.

• Erin Loubier, Senior Director for Health and Legal Integration and Payment Innovation, Whitman-Walker Health.

• Dr. Alister Martin, Physician and Assistant Professor, Harvard Medical School and Harvard Kennedy School.

• Neil Meltzer, President and CEO, LifeBridge Health.

• Dr. Carol Podgorski, Professor of Psychiatry, Associate Chair of Academic Affairs, University of Rochester Medical Center.

• Melanie Prince, CEO MAPYourWay, LLC; Immediate Past President, Case Management Society of America.

• Carrie Rogers, Associate Director, Community Catalyst.

• Tricia Sandiego, Senior Advisor, Caregiving and Health Team, AARP.

• Marsha Schofield, President, Marsha Schofield & Associates LLC.

• Mina Schultz, Health Policy and Advocacy Manager, Young Invincibles.

• Daniel Spirn, Vice President, Government Relations, Utilization Review Accreditation Commission.

• Emily Whicheloe, Director of Education, Medicare Rights Center.

II. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the April 18, 2024 meeting will include the following:

• Welcome and opening remarks from CMS leadership.

• Recap of the previous (February 1, 2024) meeting.

• Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations.

• An opportunity for public comment.

• Meeting adjourned.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Meeting Participation

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the following weblink *https://CMS-APOE-April2024.rsvpify.com* or by contacting the DFO at the address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal Government building, the Hubert H. Humphrey (HHH) Building; therefore, Federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of State-issued driver's licenses and identification (ID) cards. It prohibits Federal agencies from accepting an official driver's license or ID card from a State for any official purpose unless the Secretary of the Department of Homeland Security determines that the State meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a State or territory not in compliance with the Real ID Act will not be accepted as identification to enter Federal buildings. Visitors from these States/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into Federal buildings. The current list of States from which a Federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief*.

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

• Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.

• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into the HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

V. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–06424 Filed 3–25–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; for the State Plan of Assistive Technology (OMB Control Number 0985–0048)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This collection of information extension solicits comments on the information collection requirements relating to the State Plan of Assistive Technology (OMB Control Number 0985–0048).

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EDT) or postmarked by May 28, 2024.

ADDRESSES: Submit electronic comments on the collection of information to: Rob Groenendaal *Robert.Groenendaal@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Rob Groenendaal *Robert.Groenendaal@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Groenendaal, *Robert.Groenendaal@acl.hhs.gov,* (202) 795–7356.

SUPPLEMENTARY INFORMATION: Under the 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. ''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. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including using automated collection techniques when appropriate, and other forms of information technology. Section 4 of the 21st Century Assistive Technology Act (AT Act) provides grants to States and Territories to operate comprehensive statewide assistive technology programs (Statewide AT Programs) that increase access to and acquisition of AT devices and services for individuals with disabilities and older Americans. States and Territories are required to apply to ACL in order to receive funds under this grant program. Section 4(d) of the AT Act requires that this application contain:

(1) information identifying and describing the lead agency and implementing entity (if applicable) responsible for carrying out the Statewide AT Program and a description of how the implementing entity (if applicable) coordinates and collaborates with the State;

(2) a description of how public and private entities were involved in the development of the application and will be involved in implementation of the grant, including the resources to be committed by these entities;

(3) a description of how the Statewide AT Program will implement the activities required under the grant, which include State financing, device reutilization, device loans, device demonstrations, training, technical assistance, and public awareness. Statewide AT Programs must conduct these activities in coordination and collaboration with other appropriate entities;

(4) an explanation of how the grant funds will be allocated, used, and tracked;

(5) a set of assurances; and

(6) a description of the activities that will be supported with State funds.

Section 4 Requirements Necessitating Submission of the State Plan for AT and Annual Data Collection

Section 4 of the AT Act authorizes grants to public agencies in the 50 States and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas (States and outlying areas). With these funds, the 56 States and Territories operate ''Statewide AT Programs'' that conduct activities to increase access to, and acquisition of, assistive technology (AT) for individuals with disabilities and older Americans. These comprehensive activities are divided into two categories: ''State-level Activities'' and ''State Leadership Activities.''

According to section 4 of the AT Act, as a condition of receiving a grant to support their Statewide AT Programs, the 56 States and Territories must provide to ACL: (1) applications and (2) annual progress reports on their activities.

Applications: The application required of States and Territories is a three-year State Plan for Assistive Technology (State Plan for AT or State Plan) (OMB No. 0985–0048). The content of the State Plan for AT is based on the requirements in section 4(d) of the AT Act. As a part of this State Plan, section 4(d)(3) of the AT Act requires that States and Territories conduct activities addressing the assistive technology needs of individuals with disabilities in education, employment, community living and information technology/telecommunications.

National aggregation of data related to the required State-level and State leadership activities is necessary for the Government Performance and Results Modernization Act of 2010 (GPRAMA) as well as an Annual Report to Congress. Therefore, this State Plan for AT instrument provides a way for all 56 grantees—50 U.S. States, DC, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to collect and report data on their performance in a consistent manner.

Annual Reports: In addition to submitting a State Plan for AT every three years, States and outlying areas are required to submit annual progress reports on their activities. The data

required in that progress report is specified in section 4(f) of the AT Act.

Section 8 Requirements Necessitating Collection

Section 8(d) of the AT Act requires that ACL submit to Congress an annual report on the activities identified in the State Plan for AT and an analysis of the progress of the States and Territories in meeting their measurable goals. The State Plan for AT must include a compilation and summary of the activities conducted under section 4(f). In order to make this possible, States and Territories must provide their data uniformly. This State Plan for AT instrument was developed to ensure that all 56 States and Territories report data in a consistent manner in alignment with the requirements of section 4(f).

The proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows: Fifty-six grantees report to ACL using the web-based data collection system. A workgroup of grantees estimated that the average amount of time required to complete all responses to the data collection instrument is 73 hours annually. The burden estimates affect the reporting responsibilities of the Statewide AT Programs, and the directors were chosen to represent the diversity of the 56 programs based on regions of the country, sizes of the programs, types of agencies operating the programs, and whether the director is an individual with a disability. The estimated response burden includes time to review the instructions, gather existing information, and complete and review the data entries.

a. *Number of respondents*: 56.

b. *Frequency of response*: 1.

c. *Total annual responses (a × b):* 56.

d. *Hours per response*: 73.

e. *Total burden hours (c × d)*: 4,088.

Dated: March 20, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–06366 Filed 3–25–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2179]

Phillip Leonowens: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Phillip Leonowens for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Leonowens was convicted of one felony count under Federal law for conspiracy to smuggle goods into the United States. The factual basis supporting Mr. Leonowens' conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Leonowens was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of December 31, 2023 (30 days after receipt of the notice), Mr. Leonowens had not responded. Mr. Leonowens's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable March 26, 2024.

ADDRESSES: Any application by Mr. Leonowens for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

- *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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2023–N–2179. Received applications 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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. 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, at 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On March 2, 2023, Mr. Leonowens was convicted, as defined in section 306(l)(1) of FD&C Act, in the U.S. District Court for the Western District of Michigan, when the court entered judgment against him for the offense of conspiracy to smuggle goods into the United States in violation of 18 U.S.C. 371 and 545. FDA's finding that debarment is appropriate is based on the felony conviction referenced herein.

The factual basis for this conviction is as follows: As contained in the Information and Plea Agreement from Mr. Leonowens' case, filed on April 27, 2022, and April 28, 2022, respectively, Brendon Gagne owned and operated *www.ExpressPCT.com,* which sold misbranded prescription drugs, obtained from overseas suppliers, to customers in the United States without requiring a prescription. In exchange for obtaining Modafinil for himself, Mr. Leonowens conspired with Brendon Gagne and agreed to receive, repackage, and reship prescription drugs that Mr. Leonowens would receive from co-conspirators outside of the United States that were purchased by customers on the website *www.ExpressPCT.com.* Mr. Leonowens received approximately four packages containing bulk quantities of prescription drugs which were all shipped from overseas, including from Germany, India, and Singapore. Each time Mr. Leonowens received a package, he removed some Modafinil for himself and then sent the rest of the drugs to others. In his plea agreement, Mr. Leonowens acknowledged that he knew that receiving and reshipping prescription drugs in this manner was illegal. Mr. Leonowens also recruited others to join in the scheme by also receiving and reshipping misbranded prescription drugs from overseas suppliers. In exchange for his participation in the scheme, Mr. Leonowens received free or discounted prescription drugs.

As a result of this conviction, FDA sent Mr. Leonowens, by United Parcel Service, on November 30, 2023, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Leonowens' felony conviction under Federal law for conspiracy to smuggle goods into the United States in violation of 18 U.S.C. 371 and 545, was for conduct relating to the importation into the United States of any drug or controlled substance because he was involved in a scheme to illegally import and introduce misbranded prescription drugs into the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Leonowens' offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Leonowens of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Leonowens received the proposal and notice of opportunity for a hearing at his residence on December 1, 2023. Mr. Leonowens failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Leonowens has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Leonowens is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Leonowens is a prohibited act.

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06287 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2853]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Reporting and Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a collection of information entitled ''Reporting and Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St, North Bethesda, MD 20852, *301–796–8867, PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 26, 2024, the Agency submitted a proposed collection of information entitled ''Reporting and Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle'' to OMB for review and clearance under 44 U.S.C. 3507. 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.

OMB has now approved the information collection and has assigned OMB control number 0910–0623. The approval expires on February 28, 2027. A copy of the supporting statement for this information collection is available on the internet at *https://www.reginfo.gov/public/do/PRAMain.*

Dated: March 21, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06395 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–4636]

Determination That ISUPREL (Isoproterenol Hydrochloride) Injection, 0.2 Milligrams per Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that ISUPREL (isoproterenol hydrochloride) injection, 0.2 milligrams (mg)/milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Veniqua Stewart, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, 301–796–3627, *Veniqua.Stewart@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, is the subject of NDA 010515, held by Bausch Health US, LLC, and was initially approved on May 25, 1956. ISUPREL injection is indicated to improve hemodynamic status in patients in distributive shock and shock due to reduced cardiac output, and is also indicated for bronchospasm occurring during anesthesia. ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

E. Rust Consulting, LLC submitted a citizen petition dated October 20, 2023 (Docket No. FDA–2023–P–4636), under 21 CFR 10.30, requesting that the Agency determine whether ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ISUPREL (isoproterenol hydrochloride) injection, 0.2 mg/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06311 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0846]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Agriculture and Food Defense Strategy Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for a voluntary

survey for the Department of Health and Human Services (HHS), the U.S. Department of Agriculture (USDA), and the Department of Homeland Security (DHS), which will inform the FDA Food Safety Modernization Act (FSMA), National Agriculture and Food Defense Strategy (NAFDS) Report to Congress. The proposed survey will be used to determine what food defense activities, if any, State, local, territorial, and/or tribal (SLTT) agencies have completed to date. The information will be compared to the initial baseline data previously collected by State(s).

DATES: Either electronic or written comments on the collection of information must be submitted by May 28, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 28, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–0846 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; National Agriculture and Food Defense Strategy Survey.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St, North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA''s functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

National Agriculture and Food Defense Strategy Survey

OMB Control Number 0910–0855—Extension

We are seeking OMB approval of the NAFDS under section 108 of FSMA. This is a voluntary survey of SLTT governments intended to gauge government activities in food and agriculture defense from intentional contamination and emerging threats. The collected information will be included in the mandatory NAFDS

followup Report to Congress. The authority for us to collect the information derives from the Commissioner of Food and Drugs' authority provided in section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(C)).

Protecting the nation's food and agriculture supply against intentional contamination and other emerging threats is an important responsibility shared by SLTT governments as well as private sector partners. FSMA focuses on ensuring the safety of the U.S. food supply by shifting the efforts of Federal regulators from response to prevention and recognizes the importance of strengthening existing collaboration among all stakeholders to achieve common public health and security goals. FSMA identifies some key priorities for working with partners in areas such as reliance on Federal, State, and local agencies for inspections; improving foodborne illness surveillance; and leveraging and enhancing State and local food safety and defense capacities. Section 108 of FSMA–NAFDS requires HHS and USDA, in coordination with DHS, to work together with SLTT to monitor and measure progress in food defense.

In 2015, the initial NAFDS Report to Congress detailed the specific Federal response to food and agriculture defense goals, objectives, key initiatives, and activities that HHS, USDA, DHS, and other stakeholders planned to accomplish to meet the objectives outlined in FSMA. The NAFDS charts a direction for how Federal agencies, in cooperation with SLTT governments and private sector partners, protect the nation's food supply against intentional contamination. Not later than 4 years after the initial NAFDS Report to Congress (2015), and every 4 years thereafter (*i.e.,* 2019, 2023, 2027, etc.), HHS, USDA, and DHS are required to revise and submit an updated report to the relevant committees of Congress.

FDA is the agency primarily responsible for obtaining the information from Federal and SLTT partners to complete the NAFDS Report to Congress. An interagency working group will conduct the survey and collect and update the NAFDS as directed by FSMA, including developing metrics and measuring progress for the evaluation process.

The survey of Federal and State partners will be used to determine what food defense activities, if any, Federal and/or SLTT agencies have completed (or are planning on completing) from 2024 to 2028. Planning for the local, territorial, and tribal information collections will commence during this period of renewal. The survey will continue to be repeated approximately every 2 to 4 years, as described in section 108 of FSMA. The NAFDS survey is being administered for the purpose of monitoring progress in food and agricultural defense by government agencies.

A purposive sampling strategy is employed, such that the government agencies participating in food and agricultural defense are asked to respond to the voluntary survey. Food defense leaders responsible for conducting food defense activities during a food emergency for their jurisdiction are identified and will receive an emailed invitation to complete the survey online; they will be provided with a web link to the survey. The survey will be conducted electronically on the *FDA.gov* web portal, and results will be analyzed by the interagency working group.

Description of Respondents: Respondents to this collection are SLTT government representatives (survey respondents) who are food defense leaders responsible for conducting food defense activities during a food emergency for their jurisdictions.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
SLTT Surveys	500	1	500	0.33 (20 minutes)	165

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The FDA Office of Partnerships reviewed the questionnaire and provided the estimate of time to complete the survey. The total burden is based on our previous experiences conducting surveys. Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06316 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1056]

Clovis Oncology, Inc., AstraZeneca Pharmaceuticals LP, and GlaxoSmithKline LLC; Withdrawal of Approval of the Indications for Advanced Ovarian Cancer for Poly (ADP-Ribose) Polymerase Inhibitors RUBRACA (Rucaparib) Tablets, LYNPARZA (Olaparib) Tablets, and ZEJULA (Niraparib) Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that it is withdrawing approval of the indications for the treatment of adult patients with advanced ovarian cancer for poly (ADP-ribose) polymerase (PARP) inhibitors under three new drug applications (NDAs) from multiple applicants. The applicants Clovis Oncology, Inc. (Clovis), AstraZeneca Pharmaceuticals LP (AZ), and GlaxoSmithKline, LLC (GSK) have each voluntarily requested that the Agency withdraw approval of the indications for the treatment of adult patients with advanced ovarian cancer for their respective PARP inhibitors and waived their opportunities for hearings. Applicant and indication details are further discussed in **SUPPLEMENTARY INFORMATION**.

DATES: Approval is withdrawn as of March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–

796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PARP inhibitors and their respective applicants, NDA numbers, and indications being withdrawn are included in the following table.

Application No.	Drug	Applicant	Indication being withdrawn
NDA 209115	Rubraca (rucaparib) Tablets, equivalent to (EQ) 200 milligrams (mg) base, EQ 250 mg base, and EQ 300 mg base.	Clovis Oncology, Inc., 5500 Flatiron Pkwy., Boulder, CO 80301.	for the treatment of adult patients with a deleterious BRCA mutation (germline and/or somatic)-associated epithelial ovarian, fallopian tube, or primary peritoneal cancer who have been treated with two or more chemotherapies. Select patients for therapy based on an FDA-approved companion diagnostic for RUBRACA.
NDA 208558	Lynparza (197laparib) Tablets, 100 mg and 150 mg.	AstraZeneca Pharmaceuticals LP, 1800 Concord Pike, Wilmington, DE 19803.	for the treatment of adult patients with deleterious or suspected deleterious germline BRCA-mutated advanced ovarian cancer who have been treated with three or more prior lines of chemotherapy. Select patients for therapy based on an FDA-approved companion diagnostic for LYNPARZA.
NDA 208447	Zejula (niraparib) Capsules, EQ 100 mg base.	GlaxoSmithKline, LLC, 2929 Walnut St., Suite 1700, Philadelphia, PA 19104.	for the treatment of adult patients with advanced ovarian, fallopian tube, or primary peritoneal cancer who have been treated with three or more prior chemotherapy regimens and whose cancer is associated with homologous recombination deficiency (HRD) positive status defined by either: • a deleterious or suspected deleterious BRCA mutation, or • genomic instability and who have progressed more than 6 months after response to the last platinum-based chemotherapy. Select patients for therapy based on an FDA-approved companion diagnostic device for ZEJULA.

I. RUBRACA (Rucaparib) Tablets

A. Application Background

On December 19, 2016, FDA approved NDA 209115 for RUBRACA (rucaparib) Tablets, EQ 200 mg base, EQ 250 mg base, and EQ 300 mg base, for the treatment of adult patients with advanced ovarian cancer (see table for full indication [1]). On May 4, 2022, FDA met with Clovis to discuss the final results from the clinical trial entitled ''ARIEL4 (Assessment of Rucaparib in Ovarian CancEr TriaL): A Phase 3 Multicenter, Randomized Study of Rucaparib Versus Chemotherapy in Patients With Relapsed, BRCA Mutant, High Grade Epithelial Ovarian, Fallopian Tube, or Primary Peritoneal Cancer.'' [2] The results indicated that patients in the intent-to-treat population who were taking rucaparib potentially had a shorter overall survival (OS) than patients not on rucaparib. At that meeting FDA conveyed that these results constituted a serious risk for patients receiving treatment with rucaparib. On May 10, 2022, the Agency asked Clovis, in writing, to voluntarily permit FDA to withdraw approval of the indication for the treatment of adult patients with deleterious BRCA mutation-associated epithelial ovarian, fallopian tube or primary peritoneal cancer who have been treated with two or more chemotherapies, pursuant to § 314.150(d) (21 CFR 314.150(d)) and waive its opportunity for a hearing. On June 1, 2022, Clovis submitted a letter requesting withdrawal of approval of this indication for RUBRACA (rucaparib) Tablets pursuant to § 314.150(d) and waiving its opportunity for a hearing.

B. Withdrawal of Approval of Indication for RUBRACA Tablets

Therefore, under § 314.150(d), approval of the indication for the treatment of adult patients with deleterious BRCA mutation-associated epithelial ovarian, fallopian tube or primary peritoneal cancer who have been treated with two or more chemotherapies for RUBRACA (rucaparib) Tablets is withdrawn as of March 26, 2024. Withdrawal of approval of this indication does not affect any other approved indication for RUBRACA (rucaparib) Tablets.

II. LYNPARZA (Olaparib) Tablets

A. Application Background

On August 17, 2017, FDA approved NDA 208558 for LYNPARZA (olaparib) Tablets, 100 mg and 150 mg, for the treatment of adult patients with advanced ovarian cancer (see table for full indication). On July 14, 2022, FDA met with AZ to discuss the final OS results from the clinical trial entitled ''A Phase III, Open Label, Randomised, Controlled, Multi-centre Study to Assess the Efficacy and Safety of Olaparib Monotherapy Versus Physician's Choice Single Agent Chemotherapy in the Treatment of Platinum Sensitive Relapsed Ovarian Cancer in Patients Carrying Germline BRCA1/2 Mutations'' (SOLO3).[3] The results indicated that patients who were taking olaparib potentially had a shorter OS than patients not on olaparib, particularly in the subgroup analysis of patients who had received three or more lines of chemotherapy. On July 26, 2022, the Agency asked AZ, in writing, to

[1] The initially approved indication was ''as monotherapy for the treatment of patients with deleterious BRCA mutation (germline and/or somatic)-associated *advanced ovarian cancers* [emphasis added] who have been treated with two or more chemotherapies. Select patients for therapy based on an FDA-approved companion diagnostic for RUBRACA.'' On April 6, 2018, the Agency approved a revised indication that, among other things, clarified the indication by listing the following specific advanced ovarian cancers in the indication: epithelial ovarian, fallopian tube, and primary peritoneal cancer.

[2] The study, under its abbreviated title ''ARIEL4: A Study of Rucaparib Versus Chemotherapy BRCA Mutant Ovarian, Fallopian Tube, or Primary Peritoneal Cancer Patients,'' is available on the National Institutes of Health (NIH) National Library of Medicine's ClinicalTrials.gov web page at *https://clinicaltrials.gov/ct2/show/NCT02855944.*

[3] The study, under its abbreviated title ''Olaparib Treatment in Relapsed Germline Breast Cancer Susceptibility Gene (BRCA) Mutated Ovarian Cancer Patients Who Have Progressed at Least 6 Months After Last Platinum Treatment and Have Received at Least 2 Prior Platinum Treatments (SOLO3),'' is available on the NIH National Library of Medicine's ClinicalTrials.gov web page at *https://clinicaltrials.gov/ct2/show/NCT02282020.*

voluntarily permit FDA to withdraw approval of the indication for the treatment of adult patients with deleterious germline BRCA mutation-associated advanced ovarian cancer who have been treated with three or more chemotherapies, pursuant to § 314.150(d) and waive its opportunity for a hearing for NDA 208558. On August 19, 2022, AZ submitted a letter requesting withdrawal of approval of this indication for LYNPARZA (olaparib) Tablets (NDA 208558) pursuant to § 314.150(d) and waiving its opportunity for a hearing.

B. Withdrawal of Approval of Indication for Lynparza Tablets

Therefore, under § 314.150(d), approval of the indication for the treatment of adult patients with deleterious germline BRCA mutation-associated advanced ovarian cancer who have been treated with three or more chemotherapies for LYNPARZA (olaparib) Tablets is withdrawn as of March 26, 2024. Withdrawal of approval of this indication does not affect any other approved indication for LYNPARZA (200laparib) Tablets.

III. ZEJULA (Niraparib) Capsules

A. Application Background

On October 23, 2019, FDA approved NDA 208447 for ZEJULA (niraparib) Capsules, EQ 100 mg base, for the treatment of adult patients with advanced ovarian cancer (see table for full indication). On August 4, 2022, FDA met with GSK to discuss the status of the ZEJULA (niraparib) Capsules indication for the treatment of adult patients with advanced ovarian cancer. FDA requested that GSK voluntarily permit FDA to withdraw approval of this indication because the results from randomized trials of rucaparib and olaparib in similar treatment settings showed OS may be reduced in patients receiving PARP inhibitors. FDA stated that these results from two independent trials were concerning and suggested a class-wide effect for PARP inhibitors. In correspondence dated August 24, 2022, GSK acknowledged that because of the uncontrolled nature of the trial entitled ''A Phase 2, Open-Label, Single-Arm Study to Evaluate the Safety and Efficacy of Niraparib in Patients With Advanced, Relapsed, High-Grade Serous Epithelial Ovarian, Fallopian Tube, or Primary Peritoneal Cancer Who Have Received Three or Four Previous Chemotherapy Regimens'' [4] on which approval of this indication was based, it would be difficult to demonstrate that niraparib does not impact survival in this treatment setting. Therefore, GSK agreed to voluntarily withdraw the advanced ovarian cancer indication. On September 7, 2022, GSK submitted a letter requesting withdrawal of approval of this indication for ZEJULA (niraparib) Capsules pursuant to § 314.150(d) and waiving its opportunity for a hearing.

B. Withdrawal of Approval of Indication for Zejula Capsules

Therefore, under § 314.150(d), approval of the indication for the treatment of adult patients with advanced ovarian, fallopian tube, or primary peritoneal cancer who have been treated with three or more prior chemotherapy regimens and whose cancer is associated with HRD positive status defined by either a deleterious or suspected deleterious BRCA mutation or genomic instability and who have progressed more than 6 months after response to the last platinum-based chemotherapy for ZEJULA (niraparib) Capsules is withdrawn as of March 26, 2024. Withdrawal of approval of this indication does not affect any other approved indication for ZEJULA (niraparib) Capsules.

Dated: March 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06299 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

[4] The study, under its abbreviated title ''A Study of Niraparib in Patients With Ovarian Cancer Who Have Received Three or Four Previous Chemotherapy Regimens (QUADRA),'' is available on the NIH National Library of Medicine's ClinicalTrials.gov web page at *https://clinicaltrials.gov/ct2/show/NCT02354586.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1179]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Use of Minimal Residual Disease as an Endpoint in Multiple Myeloma Clinical Trials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on April 12, 2024, from 9 a.m. to 4 p.m. Eastern Time.

ADDRESSES: FDA and invited participants may attend the meeting at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. The public will have the option to participate via an online teleconferencing and/or video conferencing platform, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–1179. The docket will close on April 11, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end April 11, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before April 3, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2024–N–1179 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Use of Minimal Residual Disease as an Endpoint in Multiple Myeloma Clinical Trials.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the 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.

FOR FURTHER INFORMATION CONTACT: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss the use of minimal residual disease (MRD) as an endpoint in multiple myeloma clinical trials, including considerations regarding timing of assessment, patient populations, and trial design for future studies that intend to use MRD to support accelerated approval of a new product or a new indication.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials for online participants in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before April 3, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. to 2:15 p.m. Eastern Time and will take place entirely through an online meeting platform. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 1, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 2, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/*

ucm111462.htm for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place both in-person and using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06314 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–N–3168; FDA–2023–N–2780; FDA–2023–N–0940; and FDA–2023–N–3490]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Extralabel Drug Use in Animals	0910–0325	2/28/2027
Premarket Notification for a New Dietary Ingredient	0910–0330	2/28/2027
Food and Drug Administration Rapid Response Surveys	0910–0500	2/28/2027
Application for Participation in Food and Drug Administration Fellowship Programs	0910–0780	2/28/2027

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06265 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1077]

AstraZeneca Pharmaceuticals LP; Withdrawal of Approval of New Drug Application for LYNPARZA (Olaparib) Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of new drug application (NDA) for LYNPARZA (olaparib) Capsules, 50 milligrams (mg) held by AstraZeneca Pharmaceuticals LP (AZ), 1800 Concord Pike, Wilmington, DE 19803. AZ has voluntarily requested that FDA withdraw approval of this application and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2014, FDA approved NDA 206162 for LYNPARZA (olaparib) Capsules, 50 mg, as monotherapy in patients with deleterious or suspected deleterious germline BRCA-mutated (as detected by an FDA-approved test) advanced ovarian cancer who have been treated with three or more prior lines of chemotherapy. On July 14, 2022, FDA met with AZ to discuss the final overall survival (OS) results from the clinical trial entitled ''A Phase III, Open Label, Randomised, Controlled, Multi-Centre Study to Assess the Efficacy and Safety of Olaparib Monotherapy Versus Physician's Choice Single Agent Chemotherapy in the Treatment of Platinum Sensitive Relapsed Ovarian Cancer in Patients Carrying Germline BRCA1/2 Mutations'' (SOLO3).'' [1] The results indicated that patients who were taking olaparib potentially had a shorter OS than patients not on olaparib, particularly in the subgroup analysis of patients who had received three or more lines of chemotherapy. On July 26, 2022, the Agency asked AZ, in writing, to voluntarily permit FDA to withdraw approval of NDA 206162, pursuant to § 314.150(d) (21 CFR 314.150(d)) and waive its opportunity for a hearing for NDA 206162. On January 19, 2023, AZ submitted a letter requesting withdrawal of approval of the application for LYNPARZA (olaparib) Capsules (NDA 206162) pursuant to § 314.150(d) and waiving its opportunity for a hearing.

Approval of NDA 206162 for LYNPARZA (olaparib) Capsules, and all amendments and supplements thereto, is also withdrawn under § 314.150(d) as

[1] The study, under its abbreviated title ''Olaparib Treatment in Relapsed Germline Breast Cancer Susceptibility Gene (BRCA) Mutated Ovarian Cancer Patients Who Have Progressed at Least 6 Months After Last Platinum Treatment and Have Received at Least 2 Prior Platinum Treatments (SOLO3),'' is available on the *NIH National Library of Medicine's ClinicalTrials.gov* web page at *https://clinicaltrials.gov/ct2/show/NCT02282020.*

of March 26, 2024. Distribution of LYNPARZA (olaparib) Capsules, into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: March 15, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06298 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1221]

Electronic Submissions: Data Standards; Support and Requirement for the Clinical Data Interchange Standards Consortium Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Biologics Evaluation and Research (CBER) is announcing support for the Clinical Data Interchange Standards Consortium (CDISC) Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0 (SENDIG–AR v1.0) on March 26, 2024, and this standard will be required in submissions to CBER for studies that start after March 15, 2027. The Agency will update the FDA Data Standards Catalog (Catalog) to reflect this change.

DATES: Support for version CDISC SENDIG–AR v1.0 begins March 26, 2024. The requirement for electronic submissions using CDISC SENDIG–AR v1.0 begins for studies that start after March 15, 2027, for new drug applications (NDAs), abbreviated new drug applications (ANDAs), certain biologics license applications (BLAs), and certain investigational new drug applications (INDs). Submit either electronic or written comments at any time.

ADDRESSES: You may submit comments 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–2024–N–1221 for ''Data Standards; Support and Requirement Begins for the Clinical Data Interchange Standards Consortium (CDISC) Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0 (SENDIG–AR v1.0).'' 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.

FOR FURTHER INFORMATION CONTACT: Victoria Wagman, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: FDA's CBER is issuing this **Federal Register** notice to announce the date that support and requirement begins for CDISC SENDIG–AR v1.0. The guidance for industry entitled ''Providing Regulatory Submissions In Electronic Format—Standardized Study Data,'' published June 2021 (eStudy Data guidance) (available at: *https://www.fda.gov/media/82716/download*), implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k–1(a)) for study data contained in NDAs, ANDAs, certain BLAs, and certain INDs submitted to CBER or the Center for Drug Evaluation and Research by specifying the format for electronic submissions. The eStudy Data guidance states that a **Federal Register** notice will specify any new standards and version

updates to FDA-supported study data standards that will be added to the Catalog, when the support for such standards and version updates begins or ends, and when the requirement to use such standards and version updates in submissions begins or ends.

Support for CDISC SENDIG–AR v1.0 begins March 26, 2024. The requirement for electronic submissions to be submitted using CDISC SENDIG–AR v1.0 begins for studies that start after March 15, 2027, for NDAs, ANDAs, certain BLAs, and certain INDs.

Dated: March 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06294 Filed 3–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the meeting on April 29 and April 30, 2024, the Advisory Council will hear updates from federal agencies on activities during the last quarter and from panels organized by the clinical care and long-term services and supports subcommittees. On the first day, presenters will discuss care and navigation across healthcare settings from post-diagnosis through advanced disease. The panels on the second day will focus on challenges with long-term services and supports for people with young-onset dementia and their care partners/families, as well as challenges with dementia among aging populations experiencing homelessness or incarceration.

DATES: The meeting will be April 29, 2024, from 9:00 a.m. to 4:30 p.m. EST and April 30, 2024, from 9:00 a.m. to 1:00 p.m. EST.

ADDRESSES: The meeting will be a hybrid of in-person and virtual. The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. on Monday, April 29. The time for oral comments will be limited to two (2) minutes per individual. To provide a public comment, please register by emailing your name to *napa@hhs.gov* by Wednesday, April 24. Registered commenters will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. *Note:* There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. Public commenters will not be admitted to the virtual meeting before 3:30 p.m. but are encouraged to watch the meeting at *www.hhs.gov/live.* Should you have questions during the session, please email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

To ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Wednesday, May 1, 2024. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Wednesday, May 1, 2024, to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov. Note:* The meeting will be available to the public live at *www.hhs.gov/live.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: Alzheimer's disease-related dementias, clinical care, long term care support services, young-onset dementia, homelessness, incarceration.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available after the meeting. This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. Participants joining in person should note that seating may be limited. Those wishing to attend the meeting in person must send an email to *napa@hhs.gov* and put ''April 29–30 Meeting Attendance'' in the subject line by Wednesday, April 24 so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: March 14, 2024.

Miranda Lynch-Smith,

Deputy Assistant Secretary for Human Services Policy, Performing the Delegable Duties of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2024–06405 Filed 3–25–24; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism and Reproduction.

Date: April 5, 2024.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06291 Filed 3–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; BRAIN Initiative: Targeted BRAIN Circuits Projects.

Date: April 1, 2024.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06286 Filed 3–25–24; 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 Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Acquired Immunodeficiency Syndrome Research Committee (AIDS) Special Emphasis Panel.

Date: April 19, 2024.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Kristina S. Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 20, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06315 Filed 3–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0121]

Certificate of Alternative Compliance for the DELTA MARINE INDUSTRIES SHIPYARD HULL #090049

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of a certificate of alternative compliance.

SUMMARY: The Coast Guard announces that the Chief, Prevention Division, Thirteenth District has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the DELTA MARINE INDUSTRIES SHIPYARD HULL #090049. We are issuing this notice because its publication is required by statute. Due to the construction and placement of the masthead light, DELTA MARINE INDUSTRIES SHIPYARD HULL #090049 cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: The Certificate of Alternative Compliance was issued on February 23, 2024.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Ms. Jill L. Lazo, Thirteenth District, U. S. Coast Guard, telephone (206) 220–7232, email *Jill.L.Lazo@uscg.mil.*

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the

Coast Guard determines that the vessel cannot fully comply with those requirements without interfering with special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for determination that compliance with alternate requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot fully comply with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Chief, Thirteenth Coast Guard District, Prevention Division certifies that DELTA MARINE INDUSTRIES SHIPYARD HULL #090049 is a vessel of special construction or purpose, and that, with respect to the position of the masthead light, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The Chief, Thirteenth Coast Guard District, Prevention Division further finds and certifies that the masthead light is in the closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: February 23, 2024.

P.C. Burkett,

Captain, U.S. Coast Guard, Chief, Prevention Division, Thirteenth Coast Guard District.

[FR Doc. 2024–06402 Filed 3–25–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0189]

National Maritime Security Advisory Committee; Vacancies

AGENCY: United States Coast Guard, Department of Homeland Security.

ACTION: Notice; request for applications.

SUMMARY: The U.S. Coast Guard is accepting applications to fill seven vacancies on the National Maritime Security Advisory Committee (Committee). This Committee advises the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard on matters relating to national maritime security, including on enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and State, local, and tribal governments; relevant public safety and emergency response agencies; relevant law enforcement and security organizations; maritime industry; port owners and operators; and terminal owners and operators.

DATES: Completed applications must reach the U.S. Coast Guard on or before May 28, 2024.

ADDRESSES: Applications must include: (a) a cover letter expressing interest in an appointment to the National Maritime Security Advisory Committee, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief biography. Applications should be submitted via email with subject line ''NMSAC Vacancy Application'' to *ryan.f.owens@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Official of the National Maritime Security Advisory Committee; telephone 202–372–1108 or email at *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Maritime Security Advisory Committee is a Federal advisory committee. The Committee was established by section 602 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. 70112. The Committee operates under the provisions of the Federal Advisory Committee Act (5 U.S.C. ch. 10) and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U.S. Coast Guard, on matters relating to national maritime security, including on enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and State, local, and tribal governments; relevant public safety and emergency response agencies; relevant law enforcement and security organizations; maritime industry; port owners and operators; and terminal owners and operators.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. Under 46 U.S.C. 15109(f)(4), its members are required to apply for, obtain, and maintain a government national security clearance at the Secret level. The U.S. Coast Guard will sponsor and assist candidates with this process.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. The only compensation the members may receive is for travel expenses, including per diem in lieu of subsistence, actual reasonable expenses, or both incurred in the performance of their direct duties for the Committee in accordance with Federal Travel Regulations.

In this solicitation for Committee Members, we will consider applications for the following seven positions:

- One member shall represent the Maritime Industry
- One member shall represent Vessel Owner/Operators
- One member shall represent Facility Owner/Operators
- One member shall represent the Academic Community
- One member shall represent Port Authorities
- One member shall represent Maritime Labor
- One member shall represent State and Local Governments

Each member of the Committee must have particular expertise, knowledge, and experience in matters relating to the function of the Committee, which is to advise the Secretary of Homeland Security on the matters described above.

In order for the Department, to fully leverage broad ranging experience and education, the National Maritime Security Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your application to *ryan.f.owens@uscg.mil* as provided in the **ADDRESSES** section of this notice. Applications must include: (a) a cover letter expressing interest in an appointment to the

[1] 33 U.S.C. 1605.
[2] 33 CFR 81.5.
[3] 33 CFR 81.9.
[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.
[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

National Maritime Security Advisory Committee, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief biography of the applicant by the deadline in the **DATES** section of this notice.

The U.S. Coast Guard will not consider incomplete or late applications.

Privacy Act Statement

Purpose: To obtain qualified applicants to fill seven vacancies on the National Maritime Security Advisory Committee. When you apply for appointment to the National Maritime Security Advisory Committee, DHS will collect your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

Authorities: 14 U.S.C. 504; 46 U.S.C. 15108 and 15109; and 18 U.S.C. 202(a), and Department of Homeland Security Delegation No. 00915.

Routine Uses: Authorized U.S. Coast Guard personnel will use this information to consider and obtain qualified candidates to serve on the Committee. Any external disclosures of information within this record will be made in accordance with DHS/ALL–009, Department of Homeland Security Advisory Committee (73 FR 57642, October 3, 2008).

Consequences of Failure to Provide Information: Furnishing this information is voluntary. However, failure to furnish the requested information may result in your application not being considered for the Committee.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2024–06384 Filed 3–25–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Intent To Request Extension From OMB of One Current Public Collection of Information: Certified Cargo Screening Standard Security Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0053, abstracted below that we will submit to the OMB for an extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves applications for entities choosing to participate in TSA's Certified Cargo Screening Program (CCSP), including Certified Cargo Screening Facilities (CCSFs) and Certified Cargo Screening Facilities-Canine (CCSFs–K9). TSA is seeking an extension of this ICR for the continuation of the CCSP in order to secure aircraft carrying cargo.

DATES: Send your comments by May 28, 2024.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Nicole Raymond at the above address, or by telephone (703) 507–0442.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0053, Certified Cargo Screening Standard Security Program, 49 CFR parts 1515, 1540, 1544, 1546, 1548, and 1549. Section 1602 of The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) requires TSA to develop a system to screen 100 percent of cargo transported on passenger aircraft no later than August 2010.[1] The statute requires the screening to be commensurate with the level of screening required to passenger checked baggage.[2] TSA's implementing regulations currently requires 100 percent screening of all cargo transported on passenger aircraftin a manner approved by TSA.[3]

TSA's CCSP supports the 9/11 Act mandate by providing a capability for complying with the 100 percent screening requirement. TSA's CCSP regulations allows shippers, indirect air carriers, and other entities to voluntarily participate in a program through which TSA certifies entities to screen air cargo off-airport before it is tendered to air carriers for transport on passenger aircraft. CCSFs may screen cargo off-airport and must implement measures to ensure a secure chain of custody from the point of screening to the point at which the cargo is tendered to the aircraft operator. The collection of information under the CCSP (see OMB number 1652–0053) are incorporated into this ICR.

Section 1941 of the TSA Modernization Act required TSA to create a program for third-party canine teams to screen air cargo.[4] TSA created the Third-Party Canine-Cargo (3PK9–C) program to expand the availability of 3PK9–C teams certified to TSA's standards for screening air cargo by explosive detection canine teams. TSA has incorporated this capability under the framework of the CCSP, providing

[1] Public Law 110–53 (121 Stat. 266, Aug. 3, 2007), as codified at 49 U.S.C. 44901(g)(2).

[2] *Id.*

[3] *See* 49 CFR 1544.205(g) and 1546.205(g)(1).

[4] Division K of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) (Oct. 5, 2018; 132 Stat. 3186).

an opportunity for canine team providers to choose to be regulated as CCSFs under 49 CFR part 1549 and approved to use Certified 3PK9–C teams to screen cargo for TSA regulated entities.

The 3PK9–C program has been critical in supporting the air cargo industry in meeting international requirements. As a signatory to the Convention on International Aviation, the United States has agreed to apply the standards contained in Annex 17 as promulgated by the International Civil Aviation Organization (ICAO). Amendment 14 of Annex 17 removed the distinction between passenger and cargo operations and now requires that all cargo be subject to security controls, including screening where practicable, on all commercial air transport operations. Since June 30, 2021, the United States screens 100 percent of air cargo transported on all cargo aircraft destined to outbound international flights.

All CCSFs are required to allow TSA to assess whether a person or entity meets the standards of the applicable security program requirements. Pursuant to 49 CFR part 1549, canine providers participating in this program are mobile and can screen and contract with air carriers and standard CCSFs to screen air cargo, on or off airport, with canine explosives detection teams certified as meeting TSA's standards. The 3PK9–C program also approves third-party (non-governmental) certifiers, operating under the 3PK9–C Certifier Order, to evaluate canine teams to determine whether these teams meet the TSA certification standards for explosive detection and ensures effective security from the time the cargo is screened until it is accepted by an aircraft operator or a foreign air carrier for transport.

As required by section 1941 of the TSA Modernization Act, no federal funds can be expended for the training or certification of canine teams operating under this program. As with the CCSF–K9s, qualified persons may apply to become a 3PK9–C Certifier. If approved, the 3PK9–C Certifier agrees to comply with an Order issued by TSA under the authority of 49 U.S.C. 46105.

There are three programs issued under 49 CFR part 1549 that ensure compliance with TSA's requirements by persons choosing to participate in the program: (1) the Certified Cargo Screening Standard Security Program (CCSSP), applicable to facilities-based CCSFs; (2) the Certified Cargo Screening Program-Canine (CCSP–K9), applicable to canine team providers; and (3) the 3PK9–C Certifier Order, applicable to TSA-approved third-party certifiers. The collections of information under the CCSP are incorporated into this ICR.

This ICR covers the following information collections: (1) applications from entities that wish to become CCSFs, or CCSFs–K9; (2) personally identifiable information to allow TSA to conduct Security Threat Assessments (STA) and/or Criminal History Records Check (CHRC) on certain individuals employed by the CCSFs, 3PK9–C Certifiers, CCSFs–K9 and those authorized to conduct 3PK9–C Program activities; (3) standard security program or submission of a proposed modified security program or amendment to a security program by CCSFs and CCSFs–K9 or standards provided by TSA or submission of a proposed modified standard by 3PK9–C Certifiers; (4) recordkeeping requirements for CCSFs, CCSFs–K9 and 3PK9–C Certifiers; (5) designation of a Security Coordinator by CCSSSP holders, CCSP–K9 holders and 3PK9–C Certifiers; and (6) significant security concerns detailing information of incidents, suspicious activities, and/or threat information by CCSSSP holders, CCSP–K9 holders and 3PK9–C Certifier Order holders.

The following are required to maintain participation under the programs available under the CCSP:

- *CCSF Applications.* CCSP applicants are required to submit an application to become a CCSF or CCSF–K9 at least 90 days before the intended date of operation. In addition, once certified, the CCSF or CCSF–K9 is required to submit any changes to the application information as they occur. CCSFs and CCSFs–K9 must renew their certification every 36 months by submitting a new complete application. CCSP applicants are required to provide TSA access to their records, equipment, and facilities necessary for TSA to conduct an eligibility assessment. *See* 49 CFR 1549.7. A CCSF–K9 applicant must also submit an Operational Implementation Plan, described within the CCSP–K9 and any changes to the plan as they occur.
- *STA Applications.* TSA regulations require CCSP applicants to ensure that individuals performing cargo screening and related functions, and their supervisors have completed an STA conducted by TSA. In addition, TSA's CCSP regulations require Security Coordinators and their alternates to successfully have completed an STA. The CCSP regulations further require these individuals to submit personally identifiable information so that TSA can perform STAs. *See* TSA Form 419F, previously approved under OMB control number 1652–0040. *See also* 49 CFR 1549.111 and 1549.103.
- *CHRC.* TSA requires collection of personally identifiable information including fingerprints as necessary to conduct a CHRC from 3PK9–C Certifiers, CCSFs–K9, employees and authorized representatives, and those authorized to conduct 3PK9–C program activities with unescorted access to a Security Identification Display Area, screening of air cargo, or carrying of explosives in the air cargo environment.
- *Recordkeeping.* TSA requires CCSFs and CCSFs–K9, to maintain records of compliance and make them available for TSA inspection. *See* 49 CFR 1549.105. Similar requirements apply to 3PK9–C Certifiers under the applicable order.
- *Security Programs.* TSA requires CCSFs and CCSFs–K9 to accept and operate under a standard security program provided by TSA, or submit a proposed modified security program or amendment(s) to the designated TSA official for approval initially and periodically thereafter as required. *See* 49 CFR 1549.7.
- *The 3PK9–C Certifier Order.* TSA requires 3PK9–C Certifiers to accept standards provided by TSA through the 3PK9–C Certifier Order, or submit a proposed modified standard to the designated TSA official for approval initially and periodically thereafter as required.
- (5) *Significant Security Concerns Information.* TSA requires CCSFs and CCSFs–K9, and to report to TSA incidents, suspicious activities, and/or threat information. *See* 1549.5. Similar requirements apply to 3PK9–C Certifiers under the applicable order.
- (6) *Security Coordinator.* TSA requires CCSFs and CCSFs–K9 to provide the name and contact information of the SC and one or more designated alternates at the corporate or ownership level. *See* 1549.107. Similar requirements apply to 3PK9–C Certifiers under the applicable order.

Estimated Burden Hours

TSA estimates the annual respondents of CCSFs, CCSFs–K9, and 3PK9–C Certifiers to be 933 and the total annual hour burden to be 18,043 hours.

Dated: March 20, 2024.

Nicole Raymond,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–06289 Filed 3–25–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Extension of Agency Information Collection Activity Under OMB Review: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0040, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR involves three broad categories of affected populations operating under a security program: aircraft operators, foreign air carriers, and indirect air carriers. The collections of information that make up this ICR include security programs, security threat assessments (STA) on certain individuals, known shipper data via the Known Shipper Management System (KSMS), Indirect Air Carrier Management System (IACMS), and evidence of compliance recordkeeping.

DATES: Send your comments by April 25, 2024. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Nicole Raymond, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2526; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 2023, 88 FR 42736.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Air Cargo Security Requirements.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0040.

Forms(s): Aviation Security Known Shipper Verification Form, Aircraft Operator or Air Carrier Reporting Template, and Security Threat Assessment Application.

Affected Public: This ICR involves regulated entities including aircraft operators, foreign air carriers, and indirect air carriers operating under a TSA-approved security program.

Abstract: Under the authority of 49 U.S.C. 44901, TSA's regulations impose screening requirements for cargo and other property transported on commercial aircraft (passenger and all-cargo). Chapter XII of title 49, Code of Federal Regulations (CFR) defines how TSA screens all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard passenger and cargo aircraft.

This information collection currently relates to the following requirements:

- Aircraft operators, foreign air carriers, and indirect air carriers (IACs) must collect certain information as part of the implementation of a standard security program, submit modifications to the standard security program to TSA for approval, and update such programs as necessary. As part of these security programs, the regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct STAs on individuals with unescorted access to cargo.
- Companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as ''known shippers,'' must submit information to TSA. This information is collected electronically through the KSMS.
- Regulated entities must submit (by entering into the IACMS) information required from applicants requesting to be approved as IACs and the information required for their IAC annual renewal in accordance with 49 CFR 1548.7. Regulated entities must also maintain records, including records pertaining to security programs, training, and compliance to demonstrate adherence with the regulatory requirements.
- Select aircraft operators and foreign air carriers operating under certain amendments to their security programs must provide to TSA detailed screening volumes and the methodology utilized to arrive at these volumes, as well as demonstrating progress toward full compliance with the cargo security measures specified in such amendments.

Number of Respondents: 3,575.

Estimated Annual Burden Hours: An estimated 77,076 hours annually.

Dated: March 20, 2024.

Nicole Raymond,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–06285 Filed 3–25–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0101]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Verification Request and Verification Request Supplement

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance

with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 25, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0008. All submissions received must include the OMB Control Number 1615–0101 in the body of the letter, the agency name and Docket ID USCIS–2008–0008.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on October 26, 2023, at 88 FR 73609, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0008 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Verification Request and Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–845; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government; State, local or Tribal government. In the verification process, a participating agency validates an applicant's immigration status by inputting identifying information required into the Verification Information System (VIS), which executes immigration status queries against a range of data sources. If VIS returns an immigration status and the benefit-issuing agency does not find a material discrepancy with the response and the documents provided by the applicant, the verification process is complete. Then, the agency may use that immigration status information in determining whether or not to issue the benefit. In extraordinary situations as determined by the SAVE Program, agencies that do not access the automated verification system may request prior approval from SAVE to query USCIS by filing Form G–845. Although the Form G–845 does not require it, if needed certain agencies may also file the Form G–845 Supplement with the Form G–845, along with copies of immigration documents to receive additional information necessary to make their benefit determinations. While this collection of information is primarily electronic in nature through the VIS query, these forms were originally developed to facilitate communication between all benefit-granting agencies and USCIS to ensure that basic information required to assess status verification requests is provided.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection VIS Query is 21,577,983 and the estimated hour burden per response is 0.085 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,834,129 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. The collection of information is primarily electronic in nature and USCIS does not anticipate any mailings of the paper Form G–845 and Supplement and the cost associated with postage.

Dated: March 20, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–06373 Filed 3–25–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7091–N–02]

60-Day Notice of Proposed Information Collection: ConnectHomeUSA, OMB Control No.: 2577–New

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection

described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: Comments Due Date: 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, telephone 202–402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Danielle Miller, Office Administrator, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Danielle.L.Miller@hud.gov;* telephone (202) 402–3689. 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.

A. Overview of Information Collection

Title of Information Collection: ConnectHomeUSA Community Reporting Forms.

OMB Approval Number: N/A.

Type of Request: New.

Form Number: Form numbers have not yet been assigned.

Description of the need for the information and proposed use: These are new forms that will allow HUD to capture characteristics (*e.g.,* urban/rural, building configuration, construction materials, geographic locations (*e.g.* rural, suburban)) of communities that are selected to join the ConnectHomeUSA initiative. The forms will also allow communities to submit their goals and progress to HUD. The information submitted will allow HUD staff to monitor participating communities' progress and provide technical assistance to communities falling short of their goals.

Respondents: Staff responsible for ConnectHomeUSA activities working at Public Housing Authorities, tribes, Multifamily properties, Continuum of Care and Housing Opportunities for Persons with AIDS (HOPWA) grantees.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 900 in year 1; 600 in subsequent years.

Frequency of Response: Two forms will be used once, the third form will be used quarterly over a period of three years.

Average Hours per Response: Total estimated burden for all three forms is 6.

Total Estimated Burdens: 1,800 hours in year 1; 1,200 hours in years 2 and 3.

HUD-form	Total respondents	Number responses per year	Burden hours per response	Total hours per year	Cost per hour	Total cost ($)
1. General Community Form	150	1	1	150	$22.46	$3,369
2. ConnectHome USA Goal-Setting Form	150	1	3	450	22.46	10,107
3. ConnectHomeUSA Quarterly Reporting	150	4	2	1,200	22.46	26,952
Totals	900	6	6	1,800	22.46	40,428

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Nicholas Bilka,

Chief, Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2024–06357 Filed 3–25–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–08]

60-Day Notice of Proposed Information Collection: Submission Requirements for the Capital Advance Program Section 202/811, OMB Control No.: 2502–0470

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for 60 days of public comment.

DATES: *Comments Due Date:* 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, 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 and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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.

A. Overview of Information Collection

Title of Information Collection: Submission Requirements for the Capital Advance Program Section 202/811.

OMB Approval Number: 2502–0470.

OMB Expiration Date: May 31, 2020.

Type of Request: Reinstatement with change of previously approved collection for which approval has expired.

Form Number: HUD-: 2453.1–CA; 2554; 90163–CA; 90163.1–CA; 90164–CA; 90165–CA; 90166–CA; 90166a–CA; 90167–CA; 90169–CA; 90169.1–CA; 90170–CA; 90171–CA; 90172–A–CA; 90172–B–CA; 90173–A–CA; 90173–B–CA; 90173–C–CA; 90173–D–CA; 90176–CA; 90177–CA; 90178–CA; 90179–CA; 91732–A–CA; 92013; 92329; 92412–CA; 92433–CA; 92434–CA; 92435–CA; 92450–CA; 92466–CA; 92466.1–CA; 92476–A; 92476–A–CA; 92580–CA; 93432–CA; 93566–CA; 93566.1–CA; and 50080–CAH.

Description of the need for the information and proposed use: This submission is to permit the continued processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. The submission includes processing of the application for firm commitment to final closing of the capital advance. It is needed to assist HUD in determining the Owner's eligibility and capacity to finalize the development of a housing project under the Section 202 and Section 811 Capital Advance Programs. The Office of the Inspector General had also requested additional required certification language. HUD is also adding a new standard form to facilitate the renewal of project rental assistance contracts (PRACs). The form will reflect long-standing contract amendment language with updates to accommodate availability of both 5-year and annual terms for Section 202 PRACs. The number of annual contract renewal amendments is expected decrease for each of the next three years as additional properties switch from annual to five-year contracts. The Department also notes that PRAC contract renewal amendments may be executed utilizing DocuSign to obtain owner and HUD staff signatures. Finally, HUD has revised the form HUD–2554 to update contract provisions for Davis-Bacon prevailing wage requirements consistent with changes the Department of Labor (DOL) recently made to regulations at 29 CFR 5.5.

Respondents: Business or other for-profit, Multifamily HUD sponsored property owners and developers.

Estimated Number of Respondents: 5,860. (60 for new projects/5,800 renewing projects).

Estimated Number of Responses: 7,912. (2,112 for new projects/5,800 for renewing projects).

Frequency of Response: Occasion or Annual.

Average Hours per Response: 0.95.

Total Estimated Burden: 7,516.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2024–06295 Filed 3–25–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24BD009AV0100; OMB Control Number 1028–012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Cooperative Research Units (CRU)

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 25, 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 Review—Open for

Public Comments'' or by using the search function. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192 or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0126 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Melissa Thode, Program Analyst, CRU by email at *mthode@usgs.gov,* or by telephone at 703–648–4265. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 6, 2023, (88 FR 69654). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: CRU Cooperating Universities submit applications for research work orders via *Grants.gov*. The Statutory Authority used is the Cooperative Research Units Act (16 U.S.C. 753a–753b), Public Law 86–686, Sec. 1, Sept. 2, 1960, 74 Stat. 733, as amended by the Fish and Wildlife Improvement Act of 1978, Public Law 95–616, Sec. 2, Nov. 8, 1978, 92 Stat. 3110. Applications consist of project proposals, budgets and SF–424 forms. Information submitted includes project titles, schedules, scope of work, contact information (names, emails, addresses, position titles, telephone), and detailed budget breakdowns (salaries includes names, positions, rate of compensation) per Office of Acquisition requirements.

Only CRU Cooperating Universities (applicants/recipients) can apply to the Research Work Order (RWO) component of the CRU Program. All proposals & SF–424 forms (includes budgets) are submitted electronically through *Grants.gov*. USGS/Office of Acquisition and Grants uses this information to process the RWO award.

Title of Collection: Cooperative Research Units.

OMB Control Number: 1028–0126.

Form Number: None.

Type of Review: Renewal.

Respondents/Affected Public: CRU Cooperating Universities.

Total Estimated Number of Annual Respondents: 43.

Total Estimated Number of Annual Responses: 428.

Estimated Completion Time per Response: Between 10 minutes and 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,325.

Respondent's Obligation: Necessary to retain/obtain a benefit.

Frequency of Collection: Varies with research work order but at a minimum is responsible for initial applications, progress report and final report.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Donald Dennerline,

Acting Deputy Chief, U.S. Geological Survey, Cooperative Research Units.

[FR Doc. 2024–06428 Filed 3–25–24; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[24xd5141GM, DGM000000.000000, DN18000000]

Proposed Appointments to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the Chair, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of Jean Hovland and Sharon Avery as associate members of the National Indian Gaming Commission for a term of 3 years.

DATES: Submit comments on or before April 25, 2024.

ADDRESSES: Send comments to the Director, Office of the Executive Secretariat and Regulatory Affairs, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 7328, Washington, DC 20240; or *DOIExecSec@ios.doi.gov* with *NIGC Appointment Comment* in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Thomas, National Indian Gaming Commission, c/o Department of the Interior, 1849 C Street NW, Mail Stop 1621, Washington, DC 20240; telephone (202) 632–7003; facsimile (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.,* established the

National Indian Gaming Commission (Commission), composed of three full-time members. Commission members serve for a term of 3 years. The Chair is appointed by the President with the advice and consent of the Senate. The two associate members are appointed by the Secretary of the Interior. Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and . . . allow a period of not less than thirty days for receipt of public comments.'' See 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to appoint Jean Hovland and Sharon Avery as associate members of the Commission for terms of 3 years. Ms. Hovland and Ms. Avery are well qualified to be members of the National Indian Gaming Commission by virtue of their extensive background and experience in a broad spectrum of Native American issues.

Ms. Hovland is an enrolled member of the Flandreau Santee Sioux Tribe of South Dakota. She currently serves as Vice Chair of the National Indian Gaming Commission. Hovland began her three-year term at the agency on January 17, 2021, after being appointed by the Secretary of the Interior. Since joining the Commission, she has worked collaboratively with the Commission to consult with tribes for the promulgation of regulations and to coordinate the agency's regulatory responsibilities with tribal regulatory authorities. She also served as the Director of the NIGC Office of Self-Regulation from May 2021 through July 2023. Ms. Hovland has provided extensive outreach and education about combating human trafficking in the Indian Gaming industry and has devoted much of her time to outreach efforts, meeting with tribal leaders, regulatory authorities, and gaming operations on Indian Lands on the effective regulation of Indian Gaming.

Ms. Hovland served as Commissioner of the Administration for Native Americans and Deputy Assistant Secretary for Native American Affairs at the Department of Health and Human Services (HHS). As Commissioner, Ms. Hovland provides effective oversight of a $57 million annual operating budget to promote self-sufficiency for Native Americans. She provides executive leadership of a diverse staff of 30 employees and four regional training and technical assistant centers. During her time at HHS, Ms. Hovland created a $1 million funding opportunity designed to strengthen internal governance structures and capacity for tribes and tribal organizations. She also reestablished and Chairs the HHS Secretary's Intradepartmental Council on Native American Affairs, comprised of leadership across the Department.

In her role as Deputy Assistant Secretary for Native American Affairs for the Administration for Children and Families (ACF), a large and diverse program office with an $8 billion annual operating budget, over 1700 employees, and 10 regional offices, Ms. Hovland provides expert and culturally appropriate advice to the Assistant Secretary in the formulation of policy views, positions, and strategies affecting Native Americans. She serves as the key liaison and representative of all ACF program and staff offices on behalf of the Assistant Secretary related to tribal and Native American Affairs.

Prior to her appointment at HHS, Ms. Hovland served as senior advisor to the Assistant Secretary for Indian Affairs at the Department of the Interior. Ms. Hovland has also served as the tribal affairs advisor to Senator John Thune for more than 12 years. She played a key role in advocating for legislation at the request of Indian tribes on such issues as agriculture, services for law enforcement and veterans, and quality access to healthcare. She worked to develop legislation, such as the Tribal Law and Order Act of 2010 and the Code Talker Recognition Act of 2008.

Prior to her time in public service, Hovland was CEO of Wanji Native Nations Consultants, which offered training services for Tribal programs and Tribal governments.

Ms. Hovland does not have any financial interests that would make her ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Ms. Sharon Avery is an enrolled member of the Saginaw Chippewa Tribe of Michigan. She graduated from Michigan State University College of Law with a Juris Doctor degree and a certificate from the Indigenous Law and Policy Center. She has intimate familiarity with issues that impact tribal communities and the desire and willingness to learn more about those issues from those who are directly impacted by them.

Ms. Avery is currently serving as an Associate General Counsel for the National Indian Gaming Commission's Office of General Counsel and has served in this capacity since January 2020. In this role she has gained familiarity with the agency's structure and the important role the agency plays within the tribal gaming industry. She has worked extensively reviewing gaming ordinances, financing agreements, sportsbook agreements, participated in tribal consultations for regulatory changes and worked on management contract reviews.

Prior to joining the National Indian Gaming Commission, Ms. Avery worked in the Legal Department of the Saginaw Chippewa Indian Tribe of Michigan for 10 years. Ms. Avery held several roles while working for the Saginaw Chippewa Indian Tribe of Michigan. She began as an Associate General Counsel, worked her way up to Senior Associate General Counsel and then held the position of General Counsel for Tribal Operations.

During her time working as in-house counsel, she worked on many projects and gained valuable perspective from working for a tribal government. As Associate General Counsel and Senior Associate General Counsel, she reviewed gaming and entertainment contracts, worked with the Department of Justice and tribal departments to implement the Sex Offender Registration and Notification Act requirements, reviewed tribal grants, worked extensively on personnel policies and procedures, reviewed various types of agreements for both the Tribe and the Tribe's enterprises, and drafted and amended tribal codes.

As General Counsel for Tribal Operations, Ms. Avery managed the Tribe's in-house legal department which included developing and overseeing the annual departmental budget, assigning and supervising work product, providing regular updates to the Tribal Council and represented the Tribe on many long-term projects.

In serving the Saginaw Chippewa Indian Tribe of Michigan and the National Indian Gaming Commission, Ms. Avery is most proud of the teamwork she has been a part of and assisting in building the teams that support both organizations.

Ms. Avery does not have any financial interests that would make her ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on the proposed appointments of Jean Hovland and Sharon Avery may submit written comments to the address listed above. Comments must be received by April 25, 2024.

(Authority: 25 U.S.C. 2704(b)(2)(B))

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2024–06519 Filed 3–25–24; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ220000 L63000000 PH0000 24X; OMB Control No. 1004–0058]

Agency Information Collection Activities; Reporting Provision for Timber Export Determination and Log Scale Disposition

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew with revision an information collection.

DATES: Interested persons are invited to submit comments on or before May 28, 2024.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0058 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Chris Schumacher by email at *c1schuma@blm.gov,* or by telephone at (202) 577–6745. 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. The ICR may also be viewed at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. The BLM may not conduct or sponsor a collection of information and a response to a request for information is not required unless it displays a current valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

The BLM is especially interested in public comment addressing the following:

(1) whether collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility;

(2) determination of the accuracy of the BLM's estimate of the burden for collection of information, including validity of methodology and assumptions used;

(3) methods to enhance the quality, utility, and clarity of information to be collected; and

(4) how the agency can minimize the burden of information collection on those who respond, including use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments submitted in response to this notice are a matter of public record. The BLM will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BLM collects the information from respondents to determine if they are qualified by statute to purchase Federal timber resources originating from public lands managed by the BLM. This OMB control number is currently scheduled to expire December 31, 2024. This request is for OMB to renew this OMB control number for an additional three (3) years.

This request to renew OMB Control Number 1004–0058 will also request to discontinue the use of the Form 5460–17, Substitution Determination, which reduces the estimated annual burden hours from 300 to 200 hours. The BLM determined that the 5460–17 was confusing and had limited applicability without use of sourcing area designations that allow timber export in certain circumstances.

Title of Collection: Reporting Provision for Timber Export Determination and Log Scale Disposition (43 CFR parts 5424 and 5462).

OMB Control Number: 1004–0058.

Form Numbers: 5450–17 and 5460–15.

Type of Review: Extension with revision of a currently approved collection.

Respondents/Affected Public: Purchasers of Federal timber and their affiliates.

Total Estimated Number of Annual Respondents: 200.

Total Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 200.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2024–06403 Filed 3–25–24; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037638; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and/or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or

Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 25, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S. Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

One cultural item has been requested for repatriation. The one object of cultural patrimony is a basket. The basket was collected from southern California in the early 20th century by Bob Lengacher's aunt. Lengacher donated his collection to Gilcrease Museum in 1995.

The items listed below from Los Angeles, Santa Barbara, and Ventura Counties were collected by Earl Stendahl, who owned a gallery in Los Angeles. In 1950 the item was then sold to Thomas Gilcrease, who transferred his collection to the City of Tulsa in 1955.

A total of 12 cultural items have been requested for repatriation. The 12 lots of unassociated funerary objects/objects of cultural patrimony are pipes and a mortar. These cultural items were removed from Point Dume, Ramirez Canyon, and Solstice Canyon sites in Los Angeles County, CA in the early to mid-20th century.

A total of 41 cultural items have been requested for repatriation. The 41 lots of unassociated funerary objects/objects of cultural patrimony are glass and shell beads, stone beads, inlaid and plain stone vessels, plain and effigy stone pipes, ornaments (including ring, bracelet, and hair decorations), a stone seal effigy, stone hooks, and stone tools. These cultural items were removed from Dos Pueblos, Goleta Slough, and San Miguel Island sites in Santa Barbara County, CA in the early to mid-20th century.

A total of 11 cultural items have been requested for repatriation. The 11 lots of unassociated funerary objects/objects of cultural patrimony are stone and glass beads, a stone effigy bowl, animal effigies, and inlaid stone miniature canoes. These cultural items were removed from Arroyo Sequit and areas around Malibu in Venture County, CA.

A total of 535 cultural items have been requested for repatriation. The 535 lots of unassociated funerary objects/objects of cultural patrimony are stone and shell beads, trade beads, plain and effigy stone pipes, plain and inlaid stone effigies, stone tools, ornaments (including for hair and ears), stone bowls, arrow straighteners, pendants, shell gorgets, fish hooks, and a whistle. These were collected from coastal southern California by the above-mentioned Earl Stendahl.

A total of four cultural items have been requested for repatriation. The four lots of unassociated funerary objects/objects of cultural patrimony are stone and glass beads. These were collected from coastal southern California by Frank Engles, and then sold to Thomas Gilcrease through Earl Stendahl in 1950.

A total of 279 cultural items have been requested for repatriation. The 279 lots of unassociated funerary objects/objects of cultural patrimony are shells, marine animal fragments (including coral), fish hooks, shell and stone beads and discs, faunal bone tools, stone tools, shell pendants, faunal remains, petrified wood, and mortars. These were collected from coastal southern California and donated to Gilcrease Museum in 1982 by Gary Busby.

A total of two cultural items have been requested for repatriation. The two lots of unassociated funerary objects/objects of cultural patrimony are stone beads and a stone bowl. These were collected from Los Angeles County, CA and donated to Gilcrease Museum in 1986 by Dr. Norman Westermann.

A total of three cultural items have been requested for repatriation. The three lots of unassociated funerary objects/objects of cultural patrimony are shell masks. These were collected from coastal southern California and purchased from Willis Tilton and by Thomas Gilcrease in the 1950s.

A total of 172 cultural items have been requested for repatriation. The 172 lots of unassociated funerary objects/objects of cultural patrimony are shell and stone animal effigies, shell pendants, trade beads, shell and stone beads, stone pestles and mortars, plain and effigy stone pipes, gorgets, stone tools and flakes, fish hooks, and stone bowls. These were collected from coastal southern California and acquired by Gilcrease Museum likely in the mid-20th century.

Determinations

The Gilcrease Museum has determined that:

- The 1,059 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The 1,060 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06279 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037635; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Buchanan County, MO.

DATES: Repatriation of the cultural items in this notice may occur on or after April 25, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the UTK.

Description

Five lots of unassociated objects were removed from the Cloverdale Ossuary (23BN2) in Buchanan County, Missouri. Reginald Bullock (R. B.) Aker systematically excavated the site in the late 1950s; however, he did not completely excavate the ossuary during that time, returning in 1959 to recover additional burials vandalized from previously unexcavated graves. Details of the transfer of the burials and cultural items are unknown; however, it is likely that the excavated site materials were sent to William Bass at the University of Kansas and subsequently brought with him when he began working in the UTK Department of Anthropology in 1971. The five lots of unassociated funerary objects are one lot of natural stone, one lot of worked stone, one lot of possible petrified wood, one lot of charred wood, and one lot of charred pignuts.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical information, historical information, and Native American traditional knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Pawnee Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004, and the implementing regulations, 43 CFR 10.9.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06276 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037634; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Buchanan, Jackson, and Platte Counties, MO.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 25, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Human remains representing, at minimum, 28 individuals were removed from 23BN2, the Cloverdale site, in Buchanan County, MO. Most of these were systematically excavated by Reginald Bullock (R. B.) Aker in the late 1950s; however, he did not completely excavate the ossuary during that time, returning in 1959 to recover additional burials vandalized from previously unexcavated graves. Details of their transfer are unknown; however, it is likely that the burials were sent to Bill Bass at the University of Kansas (KU) and subsequently brought with him when he began working in the UTK Department of Anthropology in 1971. The two associated funerary objects are one lot of rock, and one lot of ceramics.

Human remains representing, at minimum, three individuals were removed from 23PL25, the Brenner-Keller Mound site, in Platte County, MO. After these burials were exposed by residential construction between December 1953 and January, 1954, they were excavated by Leo Roedl and James Howard as part of a joint project by the Kansas City Archaeological Society, Kansas City Museum, and University of Missouri, Columbia. At an unknown time, these individuals were sent to William Bass (probably while he was at KU) and subsequently transferred to UTK when Bass began working there in 1971. No associated funerary objects are present.

Human remains representing, at minimum 42 individuals removed from the Sugar Creek Ossuary (23PL58) in Platte County, MO. These burials were removed from the site by R.B. Aker in June, 1960 and likely housed at the University of Missouri, Columbia after excavation. With assistance from J. Mett Shippee, the burials were transferred to KU for study. William Bass was at KU at that time, and he likely brought the burials with him to UTK in 1971. The three lots of associated funerary objects are one lot of faunal remains, one lot of stone, and one lot of ceramics.

In May 1970, human remains representing, at minimum, six individuals were removed from 23PL69, the Moppin site, in Platte County, MO, by Bill Bass (then at KU). The burials were found on land owned by Earl Moppin of Platte City. Bass likely brought the burials with him to UTK in 1971. The eight associated funerary objects are one lot of rock, one thimble, one lot of metal fragments, one lot of glass and porcelain fragments, one lot of faunal remains, one lot of iron fragments, one lot of wood and charcoal, and one lot of beads.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: biological information, geographical information, historical information, and Native American traditional knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The human remains described in this notice represent the physical remains of 79 individuals of Native American ancestry.
- The 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Pawnee Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06275 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037630; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after April 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617)

496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by PMAE. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at minimum, one individual was collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 20 years old and identified as ''Paiute.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06273 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037629; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after April 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the available information, human remains representing, at least, six individuals have been reasonably identified. No associated funerary objects are present. Human remains representing, at minimum, four individuals were collected at the Chilocco Indian Agricultural School, Kay County, OK. The human remains are hair clippings collected from two individuals who were recorded as being 16 years old, one individual who was recorded as being 13 years old, and one individual who was recorded as being 12 years old and identified as ''Cherokee.'' Lawrence E. Correll took the hair clippings at the Chilocco Indian Agricultural School between 1930 and 1933. Correll sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual was collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 16 years old and identified as ''Cherokee.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual was collected at the Standing Rock School, Sioux County, ND. The human remains are hair clippings collected from one individual who was recorded as being 22 years old and identified as ''Cherokee.'' E.D. Mossman took the hair clippings at the Standing Rock School between 1930 and 1933. Mossman sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the available information and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Cherokee Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06272 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037633; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes in this notice. The human remains were removed from Keith County, NE.

DATES: Disposition of the human remains in this notice may occur on or after April 25, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Human remains representing, at minimum, one individual were removed from Keith County, NE, on April 16, 2002. This individual was found by a couple walking on the beach of Lake McConaughy and turned over to the police. The remains were transferred by the Nebraska State Crime Lab to the Nebraska State Historical Society (NSHS) on May 13, 2002. Rob Bozell of the NSHS sent the remains to UTK for examination in July 2002. Once determined not to be of recent origin (such as a missing person or crime victim), the remains were retained and housed at the UTK Forensic Anthropology Center (FAC) and assigned case number 02–31. They remained at the FAC until they were transferred to the UTK Office of Repatriation. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: biological information, geographic information, and historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, UTK has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06274 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037625; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the PMAE has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 25, 2024.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. Dr. R.W. Amidon and Oren Pomeroy removed these human remains from the Perch River Bay site in Jefferson County, NY, in 1902. Amidon and Pomeroy donated the individual's remains to the Robert S. Peabody Institute (RSPI) in 1902. In 1937, the RSPI donated the individual's remains to the PMAE. Museum documentation indicates that the Perch River Bay site is located along the shore of Lake Ontario, at the head of Perch River Bay (now known as Black River Bay), in the township of Brownville, southwest of the village of Limerick, on what was then the farm of Julius Maynard. Interments from this site most likely date to the Late Woodland Period (A.D. 1000–1600). Artifacts from the Perch River Bay site, but not associated with the burials, support this date. These items include stylistically diagnostic ceramic rim sherds exhibiting zoned and incised collars with castellated rims.

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The 32 associated funerary objects include 31 objects that are present in the Peabody Museum collections and one object that is currently missing. The 31 present associated funerary objects are one broken canid tooth, one canid jaw, one fox mandible, one raccoon mandible, one incised ceramic pipe bowl, two stone fragments, two worked groundstones, one stone tool, one piece of stone debitage, one bag of soil, 11 ceramic sherds, one lot of ceramic sherds, five lots of faunal remains, one lot of ceramic sherds and faunal remains, and one lot of charcoal, faunal remains, ceramic sherds, and soil. The one associated funerary object currently missing is one lot of faunal remains. The human remains and associated funerary objects were removed from the Durfee Farm site in Jefferson County, NY, by Mark Raymond Harrington and Irwin Hayden in 1906 as part of a Peabody Museum Expedition. Museum documentation indicates that the Durfee Farm site is in the township of Ellisburg, 3 miles north-northwest of the village of Pierrepont Manor, between Taylor Brook and Spring Brook, in the vicinity of a scattered group of farmhouses that were known locally as the ''Taylor settlement.'' The site lies on a low, flat-topped hill historically known as the ''Old Fort lot,'' once belonging to the old Durfee farm. Interments from this site most likely date to the Late Woodland Period (A.D. 1000–1600). Artifacts recovered from the site, but not associated with the burials, support this date. These items include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The 83 associated funerary objects include 81 objects that are present in the Peabody Museum collections and two objects that are currently missing. The 81 present associated funerary objects are 25 ceramic sherds, two lots of ceramic sherds, one rounded ceramic sherd, 10 ceramic pipe fragments, two bone awls or perforators, three worked animal bones, one drilled stone, one possibly chipped stone, one quartz flake, one quartz pebble, seven rounded or ribbed stones, two ground stones, one celt or adze, one lot of charred wood, one shell, 20 animal bones, and two lots of faunal remains. The two associated funerary objects currently missing are one lot of notched bones and one lot of faunal remains. The human remains and associated funerary objects were removed from the Heath Farm site in Jefferson County, NY, by Mark Raymond Harrington and Irwin Hayden in 1906 as part of a Peabody Museum Expedition. Museum documentation indicates that the Heath Farm site is on the western border of the township of Rodman, approximately 1.5 miles west of the village of Rodman, along the northern bank of the North Sandy Creek. Interments from this site most likely date to the Late Woodland Period (A.D. 1000–1600). Artifacts recovered from the site, but not associated with the burials, support this date. These items include Levanna- and Madison-style projectile points, ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims, and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The 115 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Oneida Indian Nation; Oneida Nation; and the Onondaga Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary

objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06270 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037636; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes in this notice. The human remains were removed from Lauderdale County, TN.

DATES: Repatriation of the human remains in this notice may occur on or after April 25, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Human remains representing, at minimum, one individual were removed from the bank of the Mississippi River in Lauderdale County, TN by an unknown party. On August 8, 1978, the Lauderdale County Sherriff contacted Bill Bass at UTK to assess this individual, and the Sherriff delivered the individual to Bass that same day. Bass completed his examination and sent a report to the Sherriff on August 15, 1978. Following Bass' examination, the human remains were housed at the Forensic Anthropology Center (FAC) at UTK (case number 78–10). They remained at the FAC until they were transferred to the UTK Office of Repatriation. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes. The following types of information were used to reasonably trace the relationship: archeological information, biological information, geographic information, historical information, linguistic information, and oral tradition.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, UTK has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Quapaw Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06277 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037637; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum has completed an inventory of human remains and

associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 25, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S. Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. The two associated funerary objects are one lot of faunal tools and one lot of faunal remains. These were removed from Los Angeles County, CA and were acquired by Dr. Norman Westermann at an unknown date and later donated to Gilcrease Museum by him in 1986.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Gilcrease Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06278 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037626; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the PMAE has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 25, 2024.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, seven individuals have been reasonably identified. The four associated funerary objects are dog and deer bones. Samuel W. Garman removed the human remains and associated funerary objects from Brier Hill in St. Lawrence County, NY, in May of 1878. Garman presented the human remains and associated funerary objects to Alexander Agassiz, who donated them to the Peabody Museum that same month. No information is available regarding the manner or time period of interment.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- The four objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Oneida Indian Nation; Oneida Nation; Onondaga Nation; and the Saint Regis Mohawk Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 15, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–06271 Filed 3–25–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1362]

Certain Liquid Transfer Devices With an Integral Vial Adapter; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 15, 2024, the Chief Administrative Law Judge (''CALJ'') issued an Initial Determination on Violation of Section 337. The CALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain liquid transfer devices with an integral vial adapter imported, sold for importation, and/or sold after importation by respondents Summit International Medical Technologies, Inc., Advcare Medical, Inc., and For Dragon Heart Medical, Inc.; and a cease and desist order directed to Summit International Medical Technologies, Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the CALJ's Recommended Determination on Remedy and Bonding issued in this investigation on March 15, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 22, 2024. Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1362'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) &

210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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 20, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–06317 Filed 3–25–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for Grantees From the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 28, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program supports the development and operation of nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions. Tribal coalitions provide education, support, and technical assistance to member Indian service providers and tribes to enhance their response to victims of domestic violence, dating violence, sexual assault, and stalking. 34 U.S.C. 10441(d) and 12511(d).

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1122–0013.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities. The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The annualized costs to the Federal Government resulting from the OVW staff review of the progress reports submitted by grantees are estimated to be $18,480.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (semiannually)	Total annual responses	Time per response (hour)	Total annual burden (hours)
Progress Report Form	165	2	330	1	330
Unduplicated Totals	165		330		330

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: March 21, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–06379 Filed 3–25–24; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Leadership Engagement Survey (LES)

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Drug Enforcement Administration, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on December 22, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until April 25, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Tammie S. Pugh, Office of Research and Analysis, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone 571–776–2496, *Tammie.S.Pugh@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number [1117–0053]. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement of a previously approved collection.

2. *The Title of the Form/Collection:* Leadership Engagement Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* N/A.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Federal Government/DEA employees, contractors, and TFOs working at the DEA are encouraged to respond.

5. *Obligation to Respond:* The obligation to respond is voluntary.

6. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The maximum numbers of potential respondents is 5,000.

7. *Estimated Time per Respondent:* The time per response is 20 minutes to complete the Leadership Engagement Survey.

8. *Frequency:* The LES is administered annually.

9. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is approximately 1,667 hours, assuming 5000 respondents at 20 minutes for each response.

10. *An estimate of the total annual cost burden associated with the collection, if applicable:* There is no cost to continue the survey since it is already fully developed and runs on an internal platform accessible only to DEA employees.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: March 21, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–06389 Filed 3–25–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0051]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Final Disposition Report

AGENCY: Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

ACTION: 30-Day notice.

SUMMARY: The CJIS Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on January allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until April 25, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Brian A. Cain, Management and Program Analyst, FBI, CJIS, Criminal History Information and Policy Unit, BTC–3, 1000 Custer Hollow Road, Clarksburg, WV 26306; phone: 304–625–5590 or email *fbi-iii@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1110–0051. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Final Disposition Report.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* (R–84), with supplemental questions R–84(a), R–84(b), R–84(c), R–84(d), R–84(e), R–84(f), R–84(g), R–84(h), R–84(i), and R–84(j); CJIS, FBI, DOJ.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: City, county, State, Federal and Tribal law enforcement agencies.

Abstract: This collection is needed to report completion of an arrest event. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

5. *Obligation to Respond: Mandatory:* title 28, United States Code, section 534.

6. *Total Estimated Number of Respondents:* 542,460.

7. *Estimated Time per Respondent:* 5 minutes.

8. *Frequency:* annually.

9. *Total Estimated Annual Time Burden:* 45,205 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: March 21, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–06387 Filed 3–25–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0314]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Firearm Inquiry Statistics (FIST) Program

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until April 25, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Elizabeth Davis, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *elizabeth.davis@usdoj.gov;* telephone: 202–307–0765).

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** at 89 FR 3429–3430, on Thursday, January 18, 2024, allowing a 60-day comment period. BJS did not receive any comments in response to the 60-day notice.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1121–0314. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* 2023–2026 Firearm Inquiry Statistics (FIST) Program.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is FIST–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public are State and local government.

Abstract: Through the Firearm Inquiry Statistics (FIST) Program, the Bureau of Justice Statistics (BJS) obtains annual information from State and local checking agencies responsible for maintaining records on the number of background checks for firearm transfers or permits that were issued, processed, tracked, or conducted during the calendar year. Specifically, State and local checking agencies are asked to provide information on the number of applications and denials for firearm transfers received or tracked by the agency and reasons why applications were denied. BJS combines these data with the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) transaction data to produce comprehensive national statistics on firearm applications and denials resulting from the Brady Handgun Violence Prevention Act of 1993 and similar State laws governing background checks and firearm transfers. BJS will also collect information from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on denials screened and referred to ATF field offices for investigation and possible prosecution. BJS publishes FIST data on the BJS website in statistical tables and uses the information to respond to inquiries from Congress, Federal, State, and local government officials, researchers, students, the media, and other members of the general public interested in criminal justice statistics.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 1,009.

7. *Estimated Time per Respondent:* 25 minutes.

8. *Frequency:* Annual.

9. *Total Estimated Annual Time Burden:* 420 hours.

10. *Total Estimated Annual Other Costs Burden:* $14,862.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: March 3, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–06284 Filed 3–25–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0018]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for the Grants to Indian Tribal Governments Program (Tribal Governments Program)

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 28, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program supports the development and operation of nonprofit, nongovernmental tribal domestic violence, and sexual assault coalitions. Tribal coalitions provide education, support, and technical assistance to member Indian service providers and tribes to enhance their response to victims of domestic violence, dating violence, sexual assault, and stalking. 34 U.S.C. 10441(d) and 12511(d).

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for the Grants to Indian Tribal Governments Program (Tribal Governments Program).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1122–0018.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The affected public includes the approximately 85 grantees of the Grants to Indian Tribal Governments Program (Tribal Governments Program), a grant program authorized by the Violence Against Women Act of 2005, as amended. This discretionary grant program is designed to enhance the ability of tribes to respond to violent crimes against Indian women, enhance victim safety, and develop education and prevention strategies. The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the approximately 85 respondents (Tribal Governments Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Governments Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

6. *An estimate of the total annual burden (in hours) associated with the collection:* It is estimated that it will take the approximately 85 respondents (Tribal Governments Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Governments Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

7. The total annual hour burden to complete the data collection forms is 170 hours, that is 85 grantees completing a form twice a year with an estimated completion time for the form being one hour.

8 . *An estimate of the total annual cost burden associated with the collection, if applicable:* The annualized costs to the Federal Government resulting from the OVW staff review of the progress reports submitted by grantees are estimated to be $9,520.

9.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Progress Report Form	85	2/semiannually	170	1	170
Unduplicated Totals	85		170		170

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: March 21, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–06380 Filed 3–25–24; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rehabilitation Action Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 25, 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: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The OWCP–44 is the form used to report the status of a rehabilitation case, submitted by the contractor vocational rehabilitation counselor during an ongoing vocational rehabilitation effort, and to request prompt adjudicatory claims action based on events arising during that effort. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 4, 2024 (89 FR 482).

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–OWCP.

Title of Collection: Rehabilitation Action Report.

OMB Control Number: 1240–0008.

Affected Public: Private Sector—Businesses or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 6,136.

Total Estimated Number of Responses: 6,136.

Total Estimated Annual Time Burden: 1,043 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–06358 Filed 3–25–24; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request; Authorization and Certification/Letter of Medical Necessity, CA–26/CA–27; Correction

ACTION: Request for public comments; correction.

SUMMARY: The Department of Labor (DOL), Office of Workers' Compensation Programs, is correcting a notice that appeared in the **Federal Register** on January 26, 2024. After publication of the notice, the DOL discovered that the information provided in the **SUPPLEMENTARY INFORMATION** section contained several errors. DOL is issuing this correction to provide the correct information.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, OWCP, at *suggs.anjanette@dol.gov* (email); (202) 354–9660 (phone).

SUPPLEMENTARY INFORMATION:

Correction

In FR. Doc. 2024–01535 appearing at 89 FR 5263 in the **Federal Register** of Friday, January 26, 2024, on page 5264, in the third column, the following corrections are made to the **SUPPLEMENTARY INFORMATION** section, I. Background subsection:

1. The first four full paragraphs of that third column are corrected to read as follows:

OWCP believes that the the two forms used to monitor compound and opiate medication further strengthens medical management procedures for prescription drugs, assist our stakeholders in controlling costs afrom medically unnecessary treatements, and lessens the impact of potential drug addiction and medical fraud. However, OWCP is bifurcating the CA–26 from this collection so that it may be transferred to 1240–0NEW where it will be renamed OWCP–26. (The OWCP–26 will be updated to be applicable in all of OWCP's program areas; otherwise, it will remain the same. The public and stakeholders for all programs will have opportunity to comment on the new form with the upcoming publication of the 60-day **Federal Register** Notice for 1240–0NEW.)

A major goal of the FECA program is to return an injured employee back to employment as soon as medically feasible. The CA–27 form is a means for injured workers to continue receiving opiod drugs only where medically necessary and simultaneously gives OWCP greater oversight in monitoring opioid use.

OWCP has issued regulations relating to its authority to require prior authorization for medical treatment which will now be applied through the CA–27 to opioids. (20 CFR 10.310, 10.800 & 10.809). Requiring Prior Authorization will assist OWCP in determining whether the prescribed medication will assist in curing, giving relief, and lessening the degree of disability. FECA further provides OWCP the authority to conduct such investigation as necessary before making an award of compensation (including the need for medical treatment by certain prescription drugs). 5 U.S.C. 8124(a)(2). Finally, 5 U.S.C. 8149 provides OWCP the authority to prescribe rules and regulations necessary for the administration of FECA.

As such, the CA–27, Authorization Request form and Certification/Letter of Medical Necessity or Opioid Medications, fulfill these requirements and obligations under the FECA.

2. On page 5265, in the first column, the following corrections are made to the summary of the collection contained in subsection III. Current Actions:

Type of Review: Revision.

Agency: Office of Workers' Compensation Programs, Division of Federal Employees' Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC.

OMB Number: 1240–0055.

Affected Public: Individuals or households; business or other for-profit.

Number of Respondents: 78.

Frequency: On occasion.

Number of Responses: 490.

Annual Burden Hours: 245 hours.

Annual Respondent or Recordkeeper Cost: $28,116.20.

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–06361 Filed 3–25–24; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; OSHA Outreach Training Program and OSHA Training Institute Education Centers Program Forms

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 25, 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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA's Office of Training and Educational Programs is designed to recognize and promote excellence in safety and health training. The OSHA Training Institute's (OTI) Education Centers offer courses for the private sector and other federal agency personnel at locations throughout the United States. OSHA extends its training reach to workers through its various Outreach Training Programs. Through the Outreach Training Programs, qualified individuals complete an OSHA trainer course and become authorized to teach student courses. The collection of information requirements contained in these programs are necessary to evaluate the applicant organization and to implement, oversee, and monitor the OTI Education Centers and Outreach Training Programs, courses and trainers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 28, 2023 (88 FR 89730).

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) 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; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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–OSHA.

Title of Collection: OSHA Outreach Training Program and OSHA Training Institute Education Centers Program Forms.

OMB Control Number: 1218–0262.

Affected Public: Individuals or Households; Private Sector—Businesses or other for-profits, Not-for-profit institutions.

Total Estimated Number of Respondents: 53,502 and 26.

Total Estimated Number of Responses: 58,242.

Total Estimated Annual Time Burden: 16,377 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–06360 Filed 3–25–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Worker's Compensation Programs

[OMB Control No. 1240–0NEW]

Proposed of Information Collection; Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs (OWCP–26)

AGENCY: Office of Workers' Compensation (OWCP), Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP is soliciting comments on the information collection for Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs (OWCP–26).

DATES: All comments must be received on or before May 28, 2024.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP/, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3524, Washington, DC 20210.
- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, OWCP, at *suggs.anjanette@dol.gov* (email); (202) 354–9660 (phone).

SUPPLEMENTARY INFORMATION:

I. Background

In 2013, the President of the United States, Barack Obama, signed a law, which provides greater federal oversight over compounding pharmacies that custom mix medication in bulk for patients who may benefit from prescriptions that are specific to their individual medical needs. See *Compounding Quality Act,* Public Law 113–54, 127 Stat. 587 (2013).

Compounded drugs have two or more ingredients and are offered as an alternative to Food and Drug Administration (FDA)-approved medications that do not meet an individual patient's health needs, such as when a patient has an allergy that requires a medication to be made without a certain dye. See *Compounding and the FDA: Questions and Answers, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm.*

Compounded drugs are not FDA-approved. This means that the FDA does not verify the safety or effectiveness of compounded drugs. Consumers and health professionals rely on the drug approval process to ensure that drugs are safe and effective, and made in accordance with Federal quality standards. Compounded drugs also lack an FDA finding of manufacturing quality before they are marketed.

Health risks associated with compounded drugs include the use of ingredients that may be sub- or super-potent, contaminated, or otherwise adulterated. Additionally, patients may use ineffective compounded drugs instead of FDA-approved drugs, which have been shown to be safe and effective.

Impacts on the Office of Workers' Compensation Programs (OWCP)

Due to the safety concerns surrounding compounded drugs, the Department of Labor has deemed it necessary to scrutinize the medical necessity of these medications in OWCP claims more closely by instituting a pre-authorization process. The OWCP believes that using a form to monitor compounded medications will improve the quality of medical management, increase patient safety, assist our stakeholders in controlling costs due to medically unnecessary treatments, and lessen the potential for fraud, waste, and abuse in the compensation programs administered by the OWCP. Requiring justification before payment will assist the OWCP in determining whether the prescribed medication will assist in curing, giving relief, and lessening the degree of disability.

OWCP's authority to require use of the OWCP–26 is derived from the following sources:

- *FECA:* 5 U.S.C. 8103; 20 CFR 10.310, 10.800 and 10.809.
- *EEOICPA:* 42 U.S.C. 7384t; 20 CFR 30.700(b).
- *BLBA:* 33 U.S.C. 907, as incorporate by 30 U.S.C. 932(a); 20 CFR part 725, subpart J.
- *LHWCA:* 33 U.S.C. 907, 939; 20 CFR part 702, subpart D.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection (ICR) titled, ''Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs'', OWCP–26.

OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Avenue NW, Room S–3524, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns the Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs (OWCP–26).

OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs OWCP.

OMB Number: 1240–0NEW.

Affected Public: Individuals or Households; Business or other for-profit.

Number of Respondents: 78.

Frequency: On occasion.

Number of Responses: 490.

Annual Burden Hours: 245 hours.

Annual Respondent or Recordkeeper Cost: $28,116.20.

OWCP Form Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs (OWCP–26)

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–06359 Filed 3–25–24; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–022]

NASA Advisory Council; Human Exploration and Operations Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Thursday, April 25, 2024, 9:30 a.m. to 3:30 p.m.; and Friday, April 26, 2024, 9:30 a.m. to 3:30 p.m. All times are Eastern Time.

ADDRESSES: Public attendance will be virtual only. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration and Operations Committee, NASA Headquarters, Washington, DC 20546, via email at *bette.siegel@nasa.gov* or 202–358–2245.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be open to the public via Webex and telephonically. Webex connectivity information is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed.

On April 25, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m43dff5f3fd4100f1317ce177f238ef5d.*

The event number is 2830 295 8868 and the event password is swPePuD@359. If needed, the U.S. toll conference number is 1–929–251–9612 or 1–415–527–5035 and access code is 2830 295 8868 and password is 79737831.

The agenda for the meeting includes the following topics:

—Space Operations Mission Directorate Status
—Budget
—International Space Station Update
—Commercial Crew
—Commercial LEO Development/Commercial Space Stations

On April 26, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m43dff5f3fd4100f1317ce177f238ef5d.*

The event number: 2830 295 8868 and the event password: swPePuD@359. If needed, the U.S. toll conference number is 1–929–251–9612 or 1–415–527–5035 and access code is 2830 295 8868 and password is 79737831.

The agenda for the meeting includes the following topics:

—Exploration Systems Development Mission Directorate Status
—Budget
—Moon to Mars
—Strategy and Architecture

It is imperative that these meeting be held on these days to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–06301 Filed 3–25–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–021]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation and Timing (PNT) Advisory Board. This will be the 30th meeting of the PNT Advisory Board.

DATES: Wednesday, April 24, 2024, from 9:00 a.m.–6:00 p.m., Mountain Time; and Thursday, April 25, 2024, from 9:00 a.m.–12:30 p.m., Mountain Time.

ADDRESSES: The Antler Hotel; 4 South Cascade Avenue, Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Mr. James Joseph Miller, Designated Federal Officer, PNT Advisory Board, Space Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 262–0929 or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. In-person attendees will be requested to sign a register prior to entrance to the proceedings. Webcast details to watch the meeting remotely will be available on the PNT Advisory Board website at: *www.gps.gov/governance/advisory/.*

The agenda for the meeting will include the following:

- Motivation for Protect, Toughen, and Augment (PTA) of GPS/GNSS for all Users
- Protecting GPS/GNSS Use
- Toughening GPS/GNSS
- Augmenting GPS/GNSS
- Comparison of the Capabilities of GNSSs
- Updates From International Members and Representatives
- Deliberations and Discussion on Next Steps
- Other PNT Advisory Board Business

For further information, visit the PNT Advisory Board website at: *https://www.gps.gov/governance/advisory/.*

It is imperative that the meeting be held on this date to meet the scheduling availability of key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–06300 Filed 3–25–24; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–395, 72–1038, 50–341, 50–400, 50–369, 50–370, 72–38, 50–458, 72–49, 50–250, 50–251, 72–62, 50–298, 72–66, 50–275, 50–323, 72–26, 50–483, 72–1045, 50–280, 50–281,72–2, 72–55, 50–338, 50–339,72–16, 72–56, 50–482, and 72–79; NRC–2024–0058]

Issuance of Multiple Exemptions Regarding Security Notifications, Reports, and Recording Keeping

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a single notice to announce the issuance of 13 exemptions in response to requests from ten licensees in response to a change to NRC's regulations published in the **Federal Register** on March 14, 2023.

DATES: During the period from February 1, 2024, to February 29, 2024, the NRC granted 13 exemptions in response to requests submitted by ten licensees from November 16, 2023, to January 16, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0058 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–2024–0058. 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* 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: Ed Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2481, email: *Ed.Miller@nc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from February 1, 2024, to February 29, 2024, the NRC granted 13 exemptions in response to requests submitted by the following licensees: Dominion Energy South Carolina, Inc.; DTE Electric Company; Duke Energy Progress, LLC/Duke Energy Carolinas, LLC; Entergy Operations, Inc.; Florida Power & Light Company; Nebraska Public Power District; Union Electric Company, doing business as Ameren Missouri; Virginia Electric and Power Company; and Wolf Creek Nuclear Operating Corporation.

These exemptions temporarily allow the licensee to deviate from certain requirements of part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials,'' subpart T, ''Security Notifications, Reports, and Recordkeeping.'' In support of its exemption requests, the licensees agreed to effect site-specific administrative controls that maintain the approach to complying with 10 CFR part 73 in effect prior to the NRC's issuance of a final rule, ''Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,'' which was published in the **Federal Register** on March 14, 2023, and became effective on April 13, 2023 (88 FR 15864).

II. Availability of Documents

The tables in this notice provide transparency regarding the number and

type of exemptions the NRC has issued and provide the facility name, docket number, document description, document date, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the following tables. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document description	ADAMS accession No.	Document date
Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit No. 1; Docket Nos. 50–395 and 72–1038		
Virgil C. Summer Nuclear Station Unit [No.] 1, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23334A246 ..	November 30, 2023.
Virgil C. Summer Nuclear Station, Unit [No.] 1—Exemption from Select Requirements of 10 CFR part 73—Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting (EPID L–2023–LLE–0071).	ML24032A306 ..	February 15, 2024.
DTE Electric Company; Fermi-2; Docket No. 50–341		
[Fermi-2] Request for Exemption from Enhanced Weapons, Firearms Background Checks and Security Event Notification Implementation.	ML23334A078 ..	November 30, 2023.
[Fermi-2] 2023/12/04 NRR Email Capture—Follow Up of our Phone Call—Fermi 2 Exemption Request (EPID L–2023–LLE–0073).	ML24044A149 ..	December 4, 2023.
[Fermi-2]—Exemption from Select Requirements of 10 CFR part 73 Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting (EPID L-2023–LLE–0073).	ML24019A184 ..	February 16, 2024.
Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Docket No. 50–400		
[Duke Energy Fleet] RA–23–0284 Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23320A283 ..	November 16, 2023.
[Duke Energy Fleet] Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23338A344 ..	December 4, 2023.
Shearon Harris Nuclear Power Plant, Unit 1—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0044 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24032A263 ..	February 23, 2024.
Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Docket Nos. 50–369, 50–370, and 72–38		
[Duke Energy Fleet] RA–23–0284 Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23320A283 ..	November 16, 2023.
[Duke Energy Fleet] Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23338A344 ..	December 4, 2023.
McGuire Nuclear Station, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 73 (Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting) (EPID L–2023–LLE–0063).	ML24024A218 ..	February 5, 2024.
Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Docket Nos. 50–313, 50–368, and 72–13		
Arkansas Nuclear One, Units 1 [and] 2, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23325A141 ..	November 21, 2023.
[Arkansas Nuclear One, Units 1 and 2] Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23333A136 ..	November 29, 2023.
Arkansas Nuclear One, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0054 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24012A050 ..	February 2, 2024.
Entergy Operations Inc.; River Bend Station, Unit 1; Docket Nos. 50–458 and 72–49		
River Bend Station, Unit 1, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23325A143 ..	November 21, 2023.
[River Bend Station, Unit 1] Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23333A136 ..	November 29, 2023.
River Bend Station, Unit 1—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0052 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24031A004 ..	February 21, 2024.
Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; Docket Nos. 50–250, 50–251, and 72–62		
Turkey Point Nuclear [Generating, Unit Nos. 3 and 4], Part 73 Exemption Request Regarding Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Final Rule.	ML23320A267 ..	November 16, 2023.
Turkey Point [Nuclear Generating, Unit Nos. 3 and 4], Supplement to Exemption Request Regarding Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Final Rule.	ML23334A068 ..	November 29, 2023.
Turkey Point Nuclear Generating, Unit Nos. 3 and 4—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0038 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24023A034 ..	February 5, 2024.

Document description	ADAMS accession No.	Document date
Nebraska Public Power District; Cooper Nuclear Station; Docket Nos. 50–298 and 72–66		
Cooper Nuclear Station—Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23326A175 ..	November 22, 2023.
Cooper Nuclear Station ISFSI, Supplement to Exemption Request from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23334A145 ..	November 30, 2023.
Cooper Nuclear Station—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0060 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24019A089 ..	February 6, 2024.
Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; Docket Nos. 50–275, 50–323 and 72–26		
Diablo Canyon [Nuclear Power Plant,] Units 1 and 2, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23348A368 ..	December 14, 2023.
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0084 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24036A118 ..	February 14, 2024.
Union Electric Company, doing business as Ameren Missouri; Callaway Plant, Unit No. 1; Docket Nos. 50–483 and 72–1045		
Callaway Plant, Unit [No.] 1—Request for Exemption from Specific Requirements in 2023 Security Rule, ''Enhanced Weapons, Firearms Background Checks, and Security Event Notification''.	ML23342A158 (Package).	December 7, 2023.
Callaway Plant, Unit No. 1—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0079 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24036A171 ..	February 20, 2024.
Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Docket Nos. 50–280, 50–281,72–2, and 72–55		
Surry [Power Station], Unit [Nos.] 1 and 2, Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23334A234 ..	November 30, 2023.
Surry Power Station, Unit [Nos.] 1 and 2—Exemption from Select Requirements of 10 CFR part 73—Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting (EPID L–2023–LLE–0069).	ML24032A471 ..	February 20, 2024.
Virginia Electric and Power Company; North Anna Power Station, Unit Nos. 1 and 2; Docket Nos. 50–338, 50–339,72–16, and 72–56		
North Anna [Power Station], Unit [Nos.] 1 and 2, Request for Exemption from Enhanced Weapons, Firearms Background Checks, And Security Event Notifications Implementation.	ML23334A243 ..	November 30, 2023.
North Anna Power Station, Unit [Nos.] 1 and 2—Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checked, and Security Event Notifications Implementation.	ML24017A147 ..	January 16, 2024.
North Anna Power Station, Unit [Nos.] 1 and 2—Exemption from Select Requirements of 10 CFR part 73—Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting (EPID L–2023–LLE–0070).	ML24043A067 ..	February 27, 2024.
Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Docket Nos. 50–482 and 72–79		
Wolf Creek [Generating Station, Unit 1], Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation.	ML23334A250 ..	November 30, 2023.
Wolf Creek Generating Station, Unit 1—Exemption from Select Requirements of 10 CFR part 73 (EPID L–2023–LLE–0075 [Security Notifications, Reports, and Recordkeeping and Suspicious Activity Reporting]).	ML24036A009 ..	February 14, 2024.

Dated: March 20, 2024.

For the Nuclear Regulatory Commission.

Jeffrey A. Whited,

Chief, Plant Licensing Branch 3, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–06391 Filed 3–25–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2024–1; Order No. 7014]

Public Inquiry on Modification of Service Performance Measurement Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service request proposing modifications to its Service Performance Measurement Plan for Market Dominant products and related measurement changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 3, 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: On March 18, 2024, the Postal Service filed a notice, pursuant to 39 CFR 3055.5, notifying the Commission of proposed modifications to its Service Performance Measurement (SPM) Plan for Market Dominant products and related measurement changes.[1] The most recent version of the SPM Plan that is the subject of this proceeding was approved

[1] United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, March 18, 2024 (Notice).

for implementation on July 18, 2022, in Docket No. PI2022–3.[2] Accompanying the Notice is a library reference, which contains a copy of the Postal Service's SPM Plan, revised March 18, 2024 (both redline and clean versions).[3] The Postal Service intends to implement its proposed modifications ''no earlier than 30 days after the filing of this Notice with the Commission.'' Notice at 2.

The Postal Service explains that the two principal changes it is proposing are related to the measurement of Single-Piece First-Class Mail. *Id.* at 1. Specifically, the Postal Service proposes to: ''(1) apply a data-driven approach to collection box density and origin proportion referential data; and (2) enhance SPM to align First Mile samples and retail pieces to their relative service standard service standard and apply these profiles to corresponding census originating volume.'' *Id.* The Postal Service also proposes ''other minor revisions, including word choice and grammar.'' *Id.*

The Postal Service states that SPM currently relies on ''collection box density referential data to determine sampling targets and origin proportion referential data to align collection samples and retail pieces to Single-Piece First-Class Mail originating volume.'' *Id.* at 3. Collection box density data are based on the results of a Collection Box Density Test performed by mail carriers once a year, which, the Postal Service contends, does not capture seasonal variations in the data. *Id.* The data are also currently input manually, which the Postal Service maintains is ''subject to potential data input error.'' *Id.* The Postal Service states that ''deficiencies in the accuracy and representativeness of this data were validated through sample randomized collection box inspections conducted in 2024 that showed large variations in the observed collection box density relative to the referential data.'' *Id.* Therefore, the Postal Service proposes using ''return address information as an alternative data source to improve the accuracy of density reference data in First Mile measurement.'' *Id.* at 4.

Similarly, the Postal Service states that origin proportion referential data is currently ''determined by estimating the origin volume proportion that a ZIP Code represents of its district for a given mail product by using USPS delivery point data as a proxy for where volume originates.'' *Id.* The Postal Service states that this ''proxy approach does not accurately reflect the decline in mail volume and changes in customer behavior in the past decade,'' because it ''gives weight equally to all delivery points during volume proportioning, which does not reflect the reality that geographies where businesses are located may have more volumes but less delivery points.'' *Id.* The Postal Service therefore proposes replacing the existing origin proportion referential data with return address data captured by mail processing equipment. *Id.* at 5. For both collection box density and origin proportion referential data, the Postal Service states that it intends to automate the generation and integration of return address data into the SPM system each quarter. *Id.*

With respect to aligning First Mile samples and retail pieces to their relative service standard, the Postal Service states that ''[c]urrently, there is one combined First Mile profile across all service standards, which is then equally applied to the census originating volume data for each service standard.'' *Id.* The Postal Service states that ''a more granular measurement and reporting approach is needed to ensure the accuracy and representativeness of SPM First Mile calculations.'' *Id.* Therefore, the Postal Service proposes to ''update the SPM system to create separate First Mile profiles by service standard and align to corresponding census originating volume for that service standard.'' *Id.* at 5–6.

Interested persons are invited to comment on the Postal Service's proposed modifications to its SPM Plan and related measurement changes. Comments are due April 3, 2024. The Commission does not anticipate the need for reply comments at this time. The Commission intends to evaluate the comments received and use those suggestions to help carry out its service performance measurement responsibilities under Title 39 of the United States Code. Material filed in this docket will be available for review on the Commission's website, *http://www.prc.gov.* The Commission appoints Nikki Brendemuehl to represent the interests of the general public (Public Representative) in this docket.

It is ordered:

1. Docket No. PI2024–1 is established for the purpose of considering the Postal Service's proposed revisions to its Service Performance Measurement Plan for Market Dominant products and related measurement changes.

2. Interested persons may submit written comments on any or all aspects of the Postal Service's proposals no later than April 3, 2024.

3. Nikki Brendemuehl is designated to represent the interests of the general public (Public Representative) in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06269 Filed 3–25–24; 8:45 am]

BILLING CODE 7710–FW–P

[2] On July 18, 2022, the Commission approved the Postal Service's proposed modifications to the Service Performance Measurement Plan, except for the proposed change to the critical entry times (CET) for Periodicals because the Postal Service was first required to file a request for an advisory opinion pursuant to 39 U.S.C. 3661(b) and in accordance with 39 CFR part 3020. Docket No. PI2022–3, Order Directing the Postal Service to Request an Advisory Opinion Prior to Implementing its Proposed Change to the Critical Entry Times for Periodicals and Approving the Other Proposed Revisions to Market Dominant Service Performance Measurement Plan, July 18, 2022, at 26–27 (Order No. 6232). As directed on September 2, 2022, the Postal Service filed the request for an advisory opinion from the Commission. Docket No. N2022–2, United States Postal Service's Request for an Advisory Opinion on Changes in the Nature of Postal Services, September 2, 2022. On November 30, 2022, the Commission provided its written advisory opinion. Docket No. N2022–2, Advisory Opinion on Changes to the Critical Entry Times for Certain Categories of Periodicals, November 30, 2022.

[3] Library Reference USPS–LR–PI2024–1/1, March 18, 2024.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99800; File No. SR–GEMX–2024–08]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 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 13, 2024, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW x $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–GEMX–2024–06). The instant filing replaces SR–GEMX–2024–06, which was withdrawn on March 13, 2024.

[4] On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99646 (February 29, 2024), 89 FR 16064 (March 6, 2024) (SR–GEMX–2024–04).

[5] *See* Securities Exchange Act Release No. 34–62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019). In 2017, the Exchange synchronized its options for connecting to the Exchange with that of its sister exchanges and adopted uniform colocation services, including the Cabinet Proximity Option program. *See* Securities Exchange Act Release No. 34–81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR–GEMX–2017–48).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. *See* SR–GEMX–2024–05 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. *See* SR–GEMX–2024–05 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

$3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–GEMX–2024–08 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–GEMX–2024–08. 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

[16] There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary*. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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–GEMX–2024–08 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06335 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99790; File No. SR–NYSEAMER–2024–17]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 7.31E

March 20, 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 6, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31E to provide for the use of Day ISO Reserve Orders and make other conforming changes. 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 7.31E to provide for the use of Day ISO Reserve Orders and make conforming changes in Rule 7.11E (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) and Rule 7.37E (Order Execution and Routing).

Day ISO Orders

Rule 7.31E(e)(3) defines an Intermarket Sweep Order (''ISO'') as a Limit Order that does not route and meets the requirements of Rule 600(b)(38) of Regulation NMS. As described in Rules 7.31E(e)(3)(A) and subparagraphs (i) and (ii) thereunder, an ISO may trade through a protected bid or offer and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market, provided that (1) it is identified as an ISO and (2) simultaneously with its routing to the Exchange, the ETP Holder that submits the ISO also routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets.

Rule 7.31E(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time the order arrived.

Reserve Orders

Rule 7.31E(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (''reserve interest'') of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31E(d)(2)(A).

As described in Rule 7.31E(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31E(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different working time is referred to as a ''child'' order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31E(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a Non-Routable Limit Order.

Rule 7.31E(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31E(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell)

[18] 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.

that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31E(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31E(e)(1) relating to Non-Routable Limit Orders or, for an ALO Order designated as Reserve, as provided for under Rule 7.31E(e)(2)(E).

Day ISO Reserve Orders

The Exchange proposes to amend Rule 7.31E to provide for the use of Day ISO Reserve Orders. The proposed change is not intended to modify any current functionality, but would instead facilitate the combination of two order types currently offered by the Exchange to offer increased efficiency to ETP Holders. As proposed, Day ISO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31E(d)(1) regarding Reserve Orders and current Rule 7.31E(e)(3)(C) regarding Day ISO Orders. To allow for the use of Day ISO Reserve Orders, the Exchange first proposes to amend Rule 7.31E(d)(1)(C) to include Day ISO Orders among the order types that may be designated as Reserve Orders.

The proposed change is intended to allow Day ISO Orders, as described in Rule 7.31E(e)(3)(C),[4] to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31E(d)(1). The display quantity of a Day ISO Reserve Order would be replenished as provided in Rules 7.31E(d)(1)(A) and (B), except that the Exchange proposes to add new rule text to Rule 7.31E(d)(1)(B)(ii), which currently provides that the replenish quantity of a non-routable Reserve Order will be assigned a display and working price consistent with the instructions for the order. Because Day ISO Reserve Orders would be non-routable but could not be replenished at their limit price given the specific requirements for ISOs (as described above),[5] the Exchange proposes to amend Rule 7.31E(d)(1)(B)(ii) to specify that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order, as provided for under paragraph (e)(1) of this Rule.

As currently described in Rule 7.31E(e)(3)(C), a Day ISO Reserve Order, if marketable on arrival, would immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Currently, Rule 7.31E(e)(3)(C) further provides that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. The Exchange proposes two changes to Rule 7.31E(e)(3)(C) to reflect the operation of Day ISO Reserve Orders:

- The Exchange proposes to amend the second sentence of Rule 7.31E(e)(3)(C) to specify that reserve interest of a Day ISO Reserve Order would not be displayed at its limit price because reserve interest is, by definition, non-displayed and would instead rest non-displayed on the Exchange Book at the order's limit price.
- The Exchange proposes to add new subparagraph (i) under Rule 7.31E(e)(3)(C) to offer ETP Holders the ability to designate a Day ISO Reserve Order to be cancelled if, upon replenishment, it would be displayed at a price other than its limit price for any reason. The Exchange notes that it does not offer this option for Day ISOs not designated as Reserve Orders because such orders would never be displayed at a price other than their limit price. By contrast, a Day ISO Reserve Order could be repriced upon replenishment as described in Rule 7.31E(d)(1)(B)(ii) (as modified by this filing to include Day ISOs designated as Reserve Orders, discussed below).

This proposed change would provide ETP Holders with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when Day ISO Reserve Orders would be repriced to display at a price other than their limit price upon replenishment. This designation would be optional, and if not designated to cancel, Day ISO Reserve Orders would function as otherwise described in this filing. The Exchange notes that it already makes this option available for other order types and believes that offering it to Day ISO Reserve Orders would promote consistency in Exchange rules.[6]

The working price of the reserve interest of a resting Day ISO Reserve Order would be adjusted as provided for in Rule 7.31E(d)(1). Rule 7.31E(d)(1)(E) would also apply to requests to reduce the size of Day ISO Reserve Orders.

Rule 7.31E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBBO uncrosses, the display price and working price of a Reserve Order will be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders. The Exchange proposes to amend Rule 7.31E(d)(1)(F) to provide that the rule would likewise apply to a Reserve Order that is a Day ISO. The Exchange further notes that this proposed change is consistent with the proposed change to Rule 7.31E(d)(1)(B)(ii), which similarly provides that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order.

Finally, the Exchange proposes conforming changes to Rule 7.11E(a)(5) and Rule 7.37E(f)(2) to reflect the operation of Day ISO Reserve Orders.

Rule 7.11E(a)(5) sets forth rules governing how Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Bands consistent with the Limit Up-Limit Down Plan. Rule 7.11E(a)(5)(ii) currently provides that if the Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled. The Exchange proposes to amend Rule 7.11E(a)(5)(ii) to clarify its applicability to any portion of a resting Day ISO that is designated Reserve. Thus, if the Price Bands move and the working price of any portion of a resting Day ISO Reserve Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the entirety

[4] The Exchange does not currently propose to allow Day ISO ALO Orders (as defined in Rule 7.31E(e)(3)(D)) to be designated as Reserve Orders. Accordingly, the Exchange proposes to amend Rule 7.31E(e)(3)(D) to specify that Day ISO ALOs may not be so designated.

[5] Consistent with the requirements for ISOs and the Exchange's existing rules governing Day ISOs, a Day ISO Reserve Order, as proposed, would only behave as an ISO upon arrival and would not otherwise be permitted to trade through a protected bid or offer or lock or cross an Away Market.

[6] *See, e.g.,* Rules 7.31E(e)(1), 7.31E(e)(2), and 7.31E(e)(3)(D) (permitting Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders, respectively, to be designated to cancel if they would be displayed at a price other than their limit price for any reason).

of the Day ISO Reserve Order would be cancelled.

Rule 7.37E(f)(2) describes the ISO exception to the Order Protection Rule. Rule 7.37E(f)(2)(A) provides that the Exchange will accept ISOs to be executed in the Exchange Book against orders at the Exchange's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation. Rule 7.37E(f)(2)(B) provides that, if an ISO is marked as ''Immediate-or-Cancel,'' any portion of the order not executed upon arrival will be automatically cancelled; if an ISO is not marked as ''Immediate-or-Cancel,'' any balance of the order will be displayed without regard to whether that display would lock or cross another market center, so long as the order complies with Rule 7.37E(e)(3)(C).[7] The Exchange proposes to amend Rule 7.37E(f)(2)(B) to specify that, for an ISO not marked as ''Immediate-or-Cancel,'' any displayed portion of such order would be displayed, and any non-displayed portion would remain on the Exchange Book. This proposed change is intended to clarify that the reserve interest of a Day ISO Reserve Order would not be displayed, but could, on arrival only, rest non-displayed at a price that would lock or cross another market center if the member organization has complied with Rule 7.37E(e)(3)(C).

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing ETP Holders with enhanced flexibility, optionality, and efficiency when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality similar to that available on at least one other equities exchange, thereby promoting competition among equities exchanges.[8]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the second quarter of 2024.

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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already available on at least one other equities exchange.[11] ETP Holders would be free to choose to use the proposed Day ISO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to ETP Holders when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange [12] and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

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 Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The proposal would allow the Exchange to offer functionality similar to that already available on at least one other equities exchange.[17] ETP Holders would have the option to use the proposed Day ISO Reserve Order type, and the proposed change would not otherwise alter the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. Therefore, the

[7] Rule 7.37E(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations described in Rule 7.37E(e)(2) does not apply when the Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

[8] *See, e.g.,* Nasdaq Stock Market LLC Rule 4702(b)(1)(C) (describing Price to Comply Order, which may be designated with both reserve size and as an ISO).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 8, *supra.*

[12] *See id.*

[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).

[17] *See* note 8, *supra.*

Commission waives the 30-day operative delay and designates the proposal 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–NYSEAMER–2024–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2024–17 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

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[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99793; File No. SR–BOX–2024–08]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Enhancements to Current Risk Protections

March 20, 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 14, 2024, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide enhancements to current risk protections. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 BOX Rules 7330 (Activity-Based Protections), 7340 (Global Counter), and 8130 (Automatic Quote Cancellation) to use a ''look back'' time interval for certain risk protections, to correct a non-substantive typographical error, and to make non-substantive clarifying changes. The Exchange notes that the proposed change to risk protections is similar to risk protection functionalities available at other exchanges.[3]

Background

Currently, BOX Rules 7330 and 7340 provide trade and trigger counters. The current counters are incremented so long as the time between the current trade and the previous trade does not exceed the ''Time Interval,'' which is defined as the highest value between the Exchange default and Participant-provided value.[4] BOX Rule 8130 operates in a similar fashion but applies to Market Maker quotations.[5]

Under current Rule 7330(a), the Traded Order Protection feature

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Arca Inc. (''NYSE Arca'') Rule 6.40–O *and* NYSE American LLC (''NYSE American'') Rule 928NY *and* Miami International Securities Exchange, LLC (''MIAX Options'') Rules 519A and 612.

[4] *See* BOX Rules 7330(a)(2) and (b)(2) (Time Interval) and 7340(a) (Global Time Interval). The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. *See* BOX Rule 100(a)(41).

[5] The Exchange notes that Rules 7330 and 7340 apply to all Participants, while Rule 8130 applies only to Market Makers.

maintains a counting program for each Participant. The system maintains traded order counters for: (1) maximum number of trades from orders,[6] (2) maximum traded order volume,[7] (3) maximum traded order value,[8] (4) delta maximum order traded volume,[9] and (5) delta maximum order traded value.[10] Participants can provide limits for these five counters and for the Time Interval.[11] The Exchange notes that Traded Order Protection is enabled when Participants contact the BOX Market Operations Center (''MOC'') [12] and provide values for the counters. The Exchange may also enable this feature and provide default values for the parameters.[13]

Under Rule 7330(b), the Trade Activity Protection feature maintains traded activity counters for: (1) maximum number of trades,[14] (2) maximum traded volume,[15] (3) maximum traded value,[16] (4) delta maximum traded volume,[17] and (5) delta maximum traded value.[18] Participants can provide values for these five counters and for the Time Interval.[19] The Exchange notes that Trade Activity Protection is enabled when Participants contact the MOC and provide values for the counters. The Exchange may also enable this feature and provide default values for the parameters.[20]

Additionally, BOX Rule 7340 details the Global Counter functionality which counts the number of triggering events *i.e.* when any of the above counters exceeds the maximum permissible value, across BOX's protection mechanisms per Participant ID. Specifically, the system will count the number of triggering events from the Traded Order Protection under Rule 7330(a), Trade Activity Protection under Rule 7330(b) (collectively, Activity-Based Protections), and Automatic Quote Cancellation under Rule 8130.[21] The Exchange notes that Global Counter is enabled when Participants contact the MOC and provide a value for the Global Counter. The Exchange may also enable this feature and provide default values for the parameters.[22]

Lastly, BOX Rule 8130 (Automatic Quote Cancellation) provides a trade counter applicable to trades against Market Maker quotations which resets if the time interval between a trade and its previous trade surpasses the specified time period [23] The triggering parameters [24] are for when a Market Maker, during a specified time period: (1) trades a specified number of contracts in the aggregate across all series of an options class; (2) trades a specified absolute dollar value of contracts bought and sold in a class; (3) trades a specified number of contracts in a class of the net between (i) calls purchased plus puts sold, and (ii) calls sold and puts purchased; (4) trades a specified absolute dollar value of the net position in a class between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold; or (5) trades a percentage of the Market Maker's quotes in a class.[25] The Exchange notes that Market Makers shall enable Automatic Quote Cancellation by establishing values for at least one triggering parameter and sending an enabling message to the system. The Exchange may also provide default values for some or all of the parameters.[26] The Exchange notes further that the Market Maker obligations in Rule 8050 (Market Maker Quotations) remain applicable to Market Maker quotations.[27]

The actions taken when the Activity-Based Protections, Global Counter, and Automatic Quote Cancellation are triggered vary. Beginning with Activity-Based Protections, when the Traded Order Protection counter (Rule 7330(a)) is triggered because it exceeds the maximum permissible value,[28] all orders for that Participant ID in options on that class are cancelled unless such cancelation is not permitted under other rules.[29] When the Trade Activity

[6] The maximum number of trades from orders counter will keep track of total trades in a class.

[7] The maximum traded order volume counter is designed to count the total volume traded in a class.

[8] The maximum traded order value counter is the absolute dollar value of contracts bought and sold in a class.

[9] The delta maximum order volume is the absolute value of the net position in a class between (i) calls purchased and puts sold, and (ii) calls sold and puts purchased.

[10] The delta maximum order value is the absolute value of the net position in a class between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold.

[11] The ''Time Interval'' is the highest value between the Exchange default and Participant-provided value.

[12] The term ''Market Operations Center'' or ''MOC'' means the BOX Market Operations Center, which provides market support for Options Participants during the trading day. *See* BOX Rule 100(a)(32).

[13] The Exchange's trading system is designed with certain limits that are applicable to the activities covered under the Exchange's Activity-Based Protections and essentially act as defaults. Outside of the system design, the Exchange has generally elected to not provide more restrictive thresholds because the Exchange believes that Participants are best suited to understand appropriate activity levels based on their individual needs and behavior.

[14] The maximum number of trades counter will keep track of total trades involving orders and/or quotes in all classes.

[15] The maximum traded volume counter is designed to count the total volume traded involving orders and/or quotes in all classes.

[16] The maximum traded value counter is the absolute dollar value of contracts bought and sold in all classes from trades involving orders and/or quotes.

[17] The delta maximum volume is the absolute value of the net position in all classes between (i) calls purchased and puts sold, and (ii) calls sold and puts purchased, for trades involving orders and/or quotes.

[18] The delta maximum value is the absolute value of the net position in all classes between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold, for trades involving orders and/or quotes.

[19] When both the Exchange and a Participant provide values (other than zero) for the parameters, the most restrictive (*i.e.,* the smallest value for the five Traded Order Protection counters and the highest value for the Time Interval) will be used by the system when determining if a counter has been triggered.

[20] *See supra* note 13.

[21] The Exchange notes if multiple counters within the same category of protection are triggered by the same trade, the Global Counter will only be incremented by one. If, however, multiple counters from different categories of protection are triggered by the same trade, the Global Counter will be incremented by one for each category of protection, regardless of the number of counters within the same category of protection that were triggered. For example, if the maximum traded order volume counter for the Traded Order Protections and the maximum traded volume for the Trade Activity Protection are triggered by the same trade, then the Global Counter will only be incremented by one.

[22] *See supra* note 13.

[23] The Automatic Quote Cancellation trade counters will also reset when the Participant provides an update to the value of one of the parameters or the triggering of any of the time related counters. *See* BOX Rule 8130(c). The Exchange notes that similar functionality is not available for Activity-Based Protections and Global Counter. Specifically, Activity-Based Protections and Global Counter will be reset upon the triggering of any of the counters in Rule 7330 or if the Global Counter has reached or exceeded the limit, respectively.

[24] The Exchange notes that Rule 8130 also refers to the triggering parameters as time related counters and parameters. *See* BOX Rule 8130.

[25] *See* BOX Rule 8130(b). Market Makers are required to enable the Automatic Quote Cancellation feature for the Market Maker's appointed options classes and shall provide values for at least one of the triggering parameters. *Id.* The Exchange may also provide default values for some or all of the parameters; however, any Participant-provided value will override any Exchange defaults. *See* BOX Rule 8130(a).

[26] *See supra* note 13.

[27] *See, e.g.,* BOX Rules 8050(c), (d) and (e).

[28] When both the Exchange and a Participant provide values (other than zero) for the parameters, the most restrictive (*i.e.,* the smallest value for the five Traded Order Protection counters and the highest value for the Time Interval) will be used by the system when determining if a counter has been triggered.

[29] For a counter triggered for the incoming order side, action is taken following the trade that breached the limit. For a counter triggered for the resting order side, action is taken following the complete processing of the incoming order. If a cancelation is not permitted under other BOX Rules, the orders for that Participant ID will remain. For example, under BOX Rule 8050(d), Market Maker bids and offers are firm for the number of contracts specified in the bid or offer.

Protection counter (Rule 7330(b)) is triggered because it exceeds the maximum permissible value, all orders and quotes for that Participant ID in all classes are cancelled unless such cancelation is not permitted under other rules. When the Global Counter (Rule 7340) is triggered because it has reached or exceeded the limit for the Global Counter, the system will cancel all orders and/or quotes belonging to that Participant.[30] Lastly, when the Automatic Quote Cancellation (Rule 8130) is triggered because the parameters provided by the Market Maker or the Exchange are met, it will cause the Trading Host [31] to cancel the Market Marker's quotes in the specified classes.[32]

The Exchange notes the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter. Specifically, an order or quote on the BOX Book [33] is firm and may be executed up to the Participant or Market Maker's full size, regardless of whether such an execution results in executions in excess of the Participant or Market Maker's limits. Immediately after an order or quote in excess of the Participant or Market Maker's limits is executed, Activity-Based Protections or Automatic Quote Cancellation will be triggered and the actions described above will be taken.

Time Interval

The Exchange notes that the current operation of ''Time Interval'' in Rule 7330 (Activity-Based Protections), ''Global Time Interval'' in Rule 7340 (Global Counter), and the ''time period'' in Rule 8130 (Automatic Quote Cancellation) is the same. The ''Time Interval,'' ''Global Time Interval,'' and ''time period'' will hereinafter be collectively referred to as the ''Time Periods''.

Under the system's current operation, when a Participant's order and/or quote is executed or incurs a triggering event, in the case of Global Counter, the system will compare the time of the most recent trade or triggering event to the time of the previous trade or triggering event. If the difference between the time of the current trade and the time of the previous trade from the same Participant identification number (''Participant ID'') in the same class is greater than the Time Periods, then the counters will be reset before adding the current trade to them. If, however, the difference between the time of the current trade and the time of the previous trade from the same Participant ID in the same class is less than or equal to the Time Periods, then the counters will be incremented for the current trade without resetting them first.

Using the Trade Activity Protection (Rule 7330(a)) as an example, assume the Time Interval is 2 seconds and the maximum number of trades is 3. If an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03, then the maximum number of trades counter would be incremented by 1 for the first trade and 1 for the second trade. Now, if a third order in ABC executes at 10:31:04, the system would increment the maximum number of trades counter by 1 and maximum number of trades would be triggered. Conversely, if an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03 and a third order in ABC executes at 10:31:06, then the counter would be reset, incremented for the current trade, and would not trigger the maximum number of trades protection. The trade received at 10:31:06 is compared to the previous trade at 10:31:03. There is a 3 second difference which is greater than the 2 second Time Interval, thus the system takes no action and resets the trade counter.

Proposal

In response to Participants' requests, the Exchange now proposes to change the application of the Time Periods. Specifically, the Exchange proposes BOX Rule 7330(a)(2) (Traded Order Protection) to provide:

A counting program will be maintained for each Options Participant identification number (''Participant ID'') and each counter in paragraph (a)(1) above. When an order-based trade occurs, the counting program will look back over a specified Time Interval where the ''Time Interval'' is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current trade involving an order along with all other order-based trades that occurred within the Time Interval.

Proposed BOX Rule 7330(b)(2) (Trade Activity Protection) will provide:

A counting program will be maintained for each Options Participant identification number (''Participant ID'') and each counter in paragraph (b)(1) above. When an order-based or quote-based trade occurs, the counting program will look back over a specified Time Interval where the ''Time Interval'' is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current trade along with all other order-based and quote-based trades that occurred within the Time Interval.

Proposed BOX Rule 7340(a) (Global Counter) will provide:

A counting program will be maintained and, when a triggering event occurs, the counting program will look back over a specified Global Time Interval where the ''Global Time Interval'' is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current triggering event along with all other triggering events that occurred within the Global Time Interval.

The Exchange also proposes to amend BOX Rule 8130(c) (Automatic Quote Cancellation) to remove language indicating that the counters will reset when the time interval between a trade and its previous trade surpasses the time period. The Exchange notes the other conditions that reset counters which will remain unchanged.[34]

Under this proposal, the duration of each look-back time period will be equal to the Time Periods such that when a trade occurs, that trade is counted along with all other trades that occurred within the look-back time period. Trades that occurred before the look-back time period will not be counted. Trades within each look-back time period, including the most current trade, will increment counters and if such counters equal or exceed configured limits, the counter will be triggered.[35] Again, using Trade Activity Protection as an example, assume the Time Interval is 2 seconds and the maximum number of trades is 3. If an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03, then the maximum number of trades counter would equal 2 which is less than the limit of 3 and no action is

[30] The Exchange notes that a Participant may also elect for the system to lock-out the Participant ID when the Global Counter is triggered or if the Exchange default requires a lock-out.

[31] The term ''Trading Host'' means the automated trading system used by BOX for the trading of options contracts. *See* BOX Rule 100(a)(69).

[32] *See* BOX Rule 8130(a). The Exchange notes that under BOX Rule 8050(d), Market Maker bids and offers are firm for the number of contracts specified in the bid or offer.

[33] The term ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[34] The counters will be reset when the Participant provides an update to the value of one of the parameters or upon the triggering of any of the time related counters. *See* proposed Rule 8130(c).

[35] The Exchange notes that when counters are triggered, the actions taken vary for each risk protection. *See* BOX Rules 7330(a)(3), (b)(3), and 8130(a).

taken. When a third order in ABC executes at 10:31:05, the trade counter would be triggered under the current functionality, but no action would be taken under the proposed functionality. Under the current functionality, the difference between 10:31:05 and 10:31:03 is 2 seconds and the Time Interval is 2 seconds, so trade counters would not be reset, the trade counter would be incremented from 2 to 3 which equals the limit of 3 and triggers the counter. Under the proposed functionality, the look-back time period is 2 seconds which would be between 10:31:03 and 10:31:05 and, because 2 trades have occurred during this look-back time period and the limit is 3, no action is taken. The Exchange notes that if a third order in ABC executed at 10:31:04 instead of 10:31:05, then the trade counter would trigger under both the current and the proposed functionality.

The Exchange notes that the use of look-back time periods for risk protections is not novel as other exchanges' rules provide for similar functionality. Specifically, NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') provide that their Risk Limitation Mechanism calculates for quotes and orders: the number of trades executed by the OTP Holder [36] in a particular options class; the volume of contracts traded by the OTP Holder in a particular options class; or the aggregate percentage of the Market Maker's quoted size or OTP Holder's order size(s) executed in a particular options class. To determine whether the mechanism is triggered (*i.e.,* the risk setting breached), NYSE Arca maintains separate counters that are incremented every time a trade is executed. A breach of the mechanism occurs if the number of increments to the counter, within a time period specified by NYSE Arca, exceeds the threshold set by the OTP Holder.[37] The timer elapses at the conclusion of the time period specified by NYSE Arca, unless a breach occurs sooner than the timer expiration. Both NYSE Arca and NYSE American modified this functionality in April of 2020 such that the time period is rolling (as opposed to static) and is activated each time a trade counter is incremented such that they ''look back'' at other trades that occurred within the time period to see if a breach has occurred.[38] The Exchange believes that while the application and specifics of these protections differ from those on the Exchange, the overarching concepts are similar.[39]

The Exchange notes that Miami International Securities Exchange, LLC (''MIAX Options'') also maintains a counting program (''counting program'') for each Member [40] that will count the number of orders entered and the number of contracts traded via an order entered by a Member on MIAX Options within a specified time period that has been established by the Member (the ''specified time period''). When a Member's order is entered or when an execution of a Member's order occurs, MIAX's system will look back over the specified time period to determine whether the order entered or the execution that occurred triggers the MIAX Options Risk Protection Monitor.[41] As such, the Exchange believes that the trade counter on MIAX Options is similar to BOX's Activity-Based Protections.[42]

The Exchange notes further that MIAX Options maintains a counting program for each Market Maker that will count the number of contracts traded by a Market Maker in an appointed option class within a specified time period (''Aggregate Risk Monitor'').[43] When the MIAX Options counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above an Allowable Engagement Percentage, for each options class, as established by the Market Maker,[44] the Aggregate Risk Monitor will automatically remove such Market Maker's Standard quotes and Day eQuotes in all series of that particular option class.[45] The Exchange believes that this counting program and Aggregate Risk Monitor is similar to BOX's Automatic Quote Cancellation.

In addition to the proposed risk protection changes, above, the Exchange proposes to change the word ''exceed'' to ''exceeded'' in Rule 7330(a)(3). This is a non-substantive change that corrects a typographical error and is not intended to change the meaning or operation of the rule.

Lastly, the Exchange proposes clarifying changes to Rule 7330 (Activity-Based Protections) and Rule 8130 (Automatic Quote Cancellation). Specifically, Traded Order Protection and Trade Activity Protection counters

[36] Market Makers are included in the definition of OTP Holders and therefore, unless NYSE Arca is discussing the quoting activity of Market Makers, NYSE Arca does not distinguish Market Makers from OTP Holders when discussing the risk limitation mechanisms. *See* NYSE Arca Rule 1.1 (defining OTP Holder as ''a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee'' that is ''a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities''). *See also* NYSE Arca Rule 6.32–O(a) (defining a Market Maker as an individual ''registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system'').

[37] *See* NYSE Arca Rule 6.40–O *and* NYSE American Rule 928NY.

[38] *See* Securities Exchange Act Release No. 88755 (April 27, 2020), 85 FR 25493 (May 1, 2020) (SR–NYSEArca–2020–36) *and* Securities Exchange Act Release No. 88757 (April 27, 2020), 86 FR 25482 (May 1, 2020) (SR–NYSEAMER–2020–33).

[39] BOX notes that its functionality differs slightly from NYSE Arca and NYSE American. For example: (1) NYSE Arca and NYSE American counters consist of a Transaction-Based Risk Limit, Volume-Based Risk Limit, and Percentage-Based Risk Limit; (2) NYSE Arca offers Notification Only, Block Only, and Cancel and Block Automated Breach Actions; and (3) a Transaction-Based Risk Limit, Volume-Based Risk Limit, and Percentage-Based Risk Limit breach actions on NYSE Arca and NYSE American will be applied to orders and quotes in the affected class of options. *See* NYSE Arca Rule 6.40–O *and* NYSE American Rule 928NY. The Exchange believes that while application of these concepts may differ, the concepts are the same. Specifically, the Exchange proposes to set a look-back time period and count triggering events within a specified time period similar to the current functionality at NYSE Arca and NYSE American.

[40] 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* MIAX Options Rule 100.

[41] *See* Securities Exchange Act Release No. 74118 (January 22, 2015), 80 FR 4605 (January 28, 2015) (SR–MIAX–2015–03).

[42] The Exchange notes that MIAX Options offers additional limits on Allowable Order Rate (the number of orders entered during the specific time period that has been established by the Member) and on Allowable Contract Execution Rate (the number of contracts executed during the specific time period that has been established by the Member). MIAX's members can also elect for MIAX Options to take different actions on a trigger: (1) stop accepting new orders but maintain existing orders; (2) stop accepting new orders and cancel existing orders; (3) send the Member a notification and take no further action. Further, MIAX Options' counting program counts the number of orders entered and the number of contracts traded. The Exchange believes that while MIAX Options offers additional functionality, the concepts are similar. Specifically, setting a look-back time period and counting contracts traded within that time period.

[43] *See* MIAX Options Rule 612. The Exchange notes that MIAX Options offers additional functionality such as Reset on Quote Functionality, Allowable Engagement Percentage, Net Offset, Market Maker Aggregate Class Protection, and Market Maker Single Side Protection.

[44] MIAX Options will establish a default specified time period and a default Allowable Engagement Percentage (''default settings'') on behalf of a Market Maker that has not established a specified time period and/or an Allowable Engagement Percentage. The default Allowable Engagement Percentage shall not be less than 100%. The default settings will be determined by the Exchange on an Exchange-wide basis and announced to Members via Regulatory Circular. *See* MIAX Options Rule 612.

[45] *Id. See also* MIAX Options Rule 517 (Quote Types Defined).

will be reset upon the triggering of any of the counters in Rule 7330.[46] Additionally, the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 and 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter.[47] The Exchange notes that these are non-substantive changes that seek to codify current system functionality.

The Exchange notes that it will announce an implementation date for the proposed changes to its Participants by Regulatory Notice.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[48] in general, and Section 6(b)(5) of the Act,[49] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by enhancing the risk protections available to Participants. The proposed rule change promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability.

The Exchange believes that the proposed rule change will assist with the maintenance of a fair and orderly market, remove impediments to and perfect the mechanism of a free and open market by modifying the Time Periods to be more predictable in terms of which trades or events will trigger Activity-Based Protections, the Global Counter, or Automatic Quote Cancellation on BOX. Specifically, trades that occurred during the look-back time period will be counted and trades that occurred prior to the look-back time period will not be counted. As a result, Participants will be better able to track and monitor when their activity is likely to trigger an Activity-Based protection, the Global Counter, or Automatic Quote Cancellation. Further, the proposed change, which allows for a count after each transaction on a rolling ''look back'' basis, would provide a more finely tuned tracking method for Participants related to each transaction within a specified time period. The Exchange believes that providing a definite ''look back'' time period, in addition to the current risk protections available on BOX, will enable Participants to better control their trading activity and to better manage their trading risk.

The Exchange notes that Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. The Exchange believes that providing Market Makers with more precise risk protections mitigates their exposure to excessive risk which may improve their ability to provide liquid markets to the benefit of all investors. Ultimately, the Exchange believes that the proposal serves to perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest by improving Market Makers' ability to manage their risk. The Exchange notes that similar functionality currently exists at other exchanges.[50]

The Exchange notes that the Market Maker obligations in Rule 8050 (Market Maker Quotations) remain applicable to Market Maker quotations.[51] Specifically, a Market Maker that enters a bid (offer) in a class in which such Market Maker is appointed on BOX must enter an offer (bid) within the spread allowable under Rule 8040;[52] Market Maker bids and offers are firm for all orders under this Rule and Rule 602 of Regulation NMS under the Exchange Act (''Rule 602'') for the number of contracts specified in the bid or offer provided that such bid or offer must have an initial size of at least one;[53] and a Market Maker must enter quotations for the options classes to which it is appointed, on a daily basis, during regular market hours, make markets, and enter into any resulting transactions consistent with the applicable quoting requirements, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading.[54]

In addition to the proposed risk protection changes, above, the Exchange proposes to change the word ''exceed'' to ''exceeded'' in Rule 7330(a)(3). The Exchange believes that this change will remove impediments to and perfect the mechanism of a free and open market by correcting as typographical error that may inhibit a clear reading of the Rules. This change is non-substantive and is not intended to change the meaning of the Rule or its operation.

Lastly, the Exchange believes that the clarifying change to Rule 7330 (Activity-Based Protections) to specify that Traded Order Protection and Traded Activity Protection counters will be reset upon the triggering of any of the counters in Rule 7330 is consistent with the Act. The Exchange believes further that additional clarifying changes to Rules 7330 and 8130 providing that the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 or 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter are consistent with the Act. Specifically, the proposed clarifying rule changes would provide Participants with transparency regarding the operation of Traded Order Protection, Trade Activity Protection, and Automatic Quote Cancellation, which removes impediments to and perfects the mechanism of a free and open market and a national market system by providing greater certainty with respect to how these risk protections function. The Exchange notes that these are non-substantive changes that seek to codify

[46] *See* proposed Rule 7330(c). The Exchange notes that Rule 7330 also refers to these counters as traded order counters, traded activity counters, and parameters. *See* BOX Rule 7330. The Exchange notes that Rule 8130 already provides that counters will be reset upon the triggering of any of the time related counters and Rule 7340 provides that if the Global Counter is triggered because it has reached or exceeded the limit, the counter is reset.

[47] *See* proposed Rules 7330(d) and 8130(d).

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(5).

[50] *See supra* note 3.

[51] *See, e.g.,* BOX Rules 8050(c), (d) and (e).

[52] *See* BOX Rule 8050(c)(1).

[53] *See* BOX Rules 8050(b) and (d)(1).

[54] *See* BOX Rule 8050(e). The Exchange notes that these obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis. Further, if a technical failure or limitation of the BOX Trading Host prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to BOX, timely and accurate electronic quotes in an appointed class, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the 60% quoting obligation with respect to that particular options class. An Exchange Official may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

current system functionality and do not amend operation of the Rules.

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 is proposing an enhancement that may enable Participants to better control their trading activity and to better manage their trading risk while submitting orders and quotes to BOX. The Exchange does not believe that the proposed enhancements to the existing Activity-Based Protections, Global Counter, and Automatic Quote Cancellation would impose a burden on competing options exchanges. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. Additionally, the proposed enhancements to Activity-Based Protections, Global Counter, and Automatic Quote Cancellation are similar to functionality currently available on competing exchanges.[55] The Exchange believes that the proposal does not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because all Participants may avail themselves of the applicable risk controls on BOX. Further, the Exchange notes that the Time Periods are applied in the same manner for all Participants. Additionally, the Exchange does not believe that correcting a typographical error imposes any burden on competition because it is not intended to change the meaning or operation of the rule. Lastly, the Exchange does not believe that codifying the functionality that Traded Order Protection and Trade Activity Protection counters will be reset upon the triggering of any of the counters in Rule 7330 or the functionality that the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 or 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter, imposes any burden on competition because these changes are intended to increase the transparency of current system functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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[56] and Rule 19b–4(f)(6) thereunder.[57]

A proposed rule change filed under Rule 19b–4(f)(6)[58] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[59] 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 Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. As the Exchange notes, similar functionality currently exists at other exchanges.[60] Accordingly, the proposal raises no new or novel issues. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[61]

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)[62] 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–BOX–2024–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BOX–2024–08. 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

[55] *See supra* note 3.

[56] 15 U.S.C. 78s(b)(3)(A)(iii).

[57] 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.

[58] 17 CFR 240.19b–4(f)(6).

[59] 17 CFR 240.19b–4(f)(6)(iii).

[60] *See supra* note 3.

[61] 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).

[62] 15 U.S.C. 78s(b)(2)(B).

that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2024–08 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06329 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99782; File No. SR–CboeBZX–2023–069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to, and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change To List and Trade Shares of the VanEck Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 20, 2024.

On September 6, 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 VanEck Ethereum ETF (''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 September 26, 2023.[3]

On September 27, 2023, 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 proposed rule change.[5] On December 18, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On February 16, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced in its entirety the proposed rule change as originally submitted. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to extend the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the VanEck Ethereum ETF (the ''Trust''),[8] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR–CboeBZX–2023–069 amends and replaces in its entirety the proposal as originally submitted on September 6, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[9] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[10] VanEck Digital Assets, LLC is the sponsor of the Trust (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[11]

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[12] With this in mind, the CME

[63] 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. 98457 (Sept. 20, 2023), 88 FR 66076. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-069/srcboebzx2023069.htm*.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98566, 88 FR 68236 (Oct. 3, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 99195, 88 FR 88683 (Dec. 22, 2023).

[8] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[9] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[10] Any of the statements or representations regarding the Benchmark composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[11] *See* Amendment No. 1 to Registration Statement on Form S–1, dated February 16, 2024, submitted to the Commission by the Sponsor on behalf of the Trust (333–255888). The descriptions of the Trust, the Shares, and the Benchmark contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[12] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order''). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP ''was based on an assumption

Ether Futures market, which launched in February 2021, is the proper market to consider in determining whether there is a related regulated market of significant size.

Recently, the Commission issued an order granting approval for proposals to list bitcoin-based commodity trust and bitcoin-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin instead of ethereum) (''Spot Bitcoin ETPs'').[13] By way of background, in 2022 the Commission disapproved proposals[14] to list Spot Bitcoin ETPs, including the Grayscale Order.[15] Grayscale appealed the decision with the U.S. Court of Appeals for the D.C. Circuit, which held that the Commission had failed to adequately explain its reasoning that the proposing exchange had not established that the CME bitcoin futures market was a market of significant size related to spot bitcoin, or that the ''other means'' asserted were sufficient to satisfy the statutory standard. As a result, the court vacated the Grayscale Order and remanded the matter to the Commission.[16] In considering the remand of the Grayscale Order and Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the CME Bitcoin Futures market is a regulated market of significant size. Specifically, the Commission stated:

> [B]ased on the record before the Commission and the improved quality of the correlation analysis in the record . . . the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of ''significant size'' related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[17]

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Ether Futures market represents a regulated market of significant size and that this proposal should be approved.

Background

Ethereum (also referred to as ''ETH'' or ''ether'') is free software that is hosted on computers distributed throughout the globe. It employs an array of logic, called a protocol, to create a unified understanding of ownership, commercial activity, and business logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. It is widely understood that no single intermediary or entity operates or controls the Ethereum network (referred to as ''decentralization''), the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ETH, which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the ''Ethereum Blockchain''), and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual peer-to-peer transactions. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a limited-purpose, peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs.

Heretofore, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain exposure to ETH. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether; or (ii) over-the-counter ether funds (''OTC ETH Funds'') with high management fees and potentially volatile premiums and discounts. Meanwhile, investors in other countries, including Germany, Canada, Switzerland, and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ETH. Investors across Europe and Canada have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.[18]

To this point, the lack of an ETP that holds spot ETH (a ''Spot Ether ETP'') exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot Ether ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC ETH Funds are not afforded the benefits and protections of regulated Spot Ether ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC ETH Funds. An investor who purchased the largest OTC ETH Fund in

that the currency market and the spot gold market were largely unregulated.'' *See* Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

[13] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[14] *See* Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 97102 (Mar. 10, 2023), 88 FR 16055 (Mar. 15, 2023) (SR–CboeBZX–2022–035) (''VanEck Order II'') and n.11 therein for the complete list of previous proposals.

[15] *See* Securities Exchange Act Release No. 95180 (June 29, 2022) 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) (the ''Grayscale Order'').

[16] *See Grayscale Investments, LLC* v. *SEC,* 82 F.4th 1239 (D.C. Cir. 2023).

[17] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

[18] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Ether ETPs.

January 2021 and held the position at the end of 2022 would have suffered a 69% loss due to the premium/discount, even if the price of ETH did not change. Many retail investors likely suffered losses due to this premium/discount in OTC ETH Fund trading; all such losses could have been avoided if a Spot Ether ETP had been available. Additionally, many U.S. investors that held their digital assets in accounts at FTX,[19] Celsius Network LLC,[20] BlockFi Inc.[21] and Voyager Digital Holdings, Inc.[22] have become unsecured creditors in the insolvencies of those entities. If a Spot Ether ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Ether ETP. To this point, approval of a Spot Ether ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ETH, on centralized platforms.

Ether Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') that provide exposure to ether primarily through CME Ether Futures (''Ether Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ether.

The structure of Ether Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Ether ETP. Specifically, the cost of rolling CME Ether Futures contracts will cause the Ether Futures ETFs to lag the performance of ether itself and could cost U.S. investors significant amounts of money on an annual basis compared to Spot Ether ETPs. Such rolling costs would not be required for Spot Ether ETPs that hold ether. Further, Ether Futures ETFs could potentially hit CME position limits, which would force an Ether Futures ETF to invest in non-futures assets for ether exposure and cause potential investor confusion and lack of certainty about what such Ether Futures ETFs are actually holding to try to get exposure to ether, not to mention completely changing the risk profile associated with such an ETF. While Ether Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to ether that will unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Ether ETPs and the Exchange believes that any proposal to list and trade a Spot Ether ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Ether Futures ETFs and Spot Ether ETPs as warranted based on the Commission's concerns about the custody of physical ether that a Spot Ether ETP would hold (compared to cash-settled futures contracts),[23] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with the Custodian to provide, as further outlined below. In the custody statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While ether is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's ether. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's ether holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the NYDFS, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot ether custody justifies differential treatment of a Ether Futures ETF versus a Spot Ether ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and safeguards in handling spot ether that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Ether Futures ETF compared to a Spot Ether ETP differently due to spot ether custody concerns.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Ether ETPs compared to the Ether Futures ETFs would lead to the conclusion that Spot Ether ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Ether ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Ether Futures ETFs as compared to Spot Ether ETPs, losses which could be prevented by the Commission approving Spot Ether ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Ether ETPs would apply equally to the spot markets underlying the futures contracts held by an Ether Futures ETF. Both the Exchange and Sponsor believe that the CME Ether Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing and trading of Ether Futures ETFs that hold primarily CME Ether Futures, however, the only consistent outcome would be approving Spot Ether ETPs on the basis that the CME Ether Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Ether ETPs to be listed and traded alongside Ether Futures ETFs and Spot Bitcoin ETPs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for ether exposure, and offer flexibility in the

[19] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[20] *See* Celsius Network LLC, et al., Case No. 22–10964.

[21] *See* BlockFi Inc., Case No. 22–19361.

[22] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

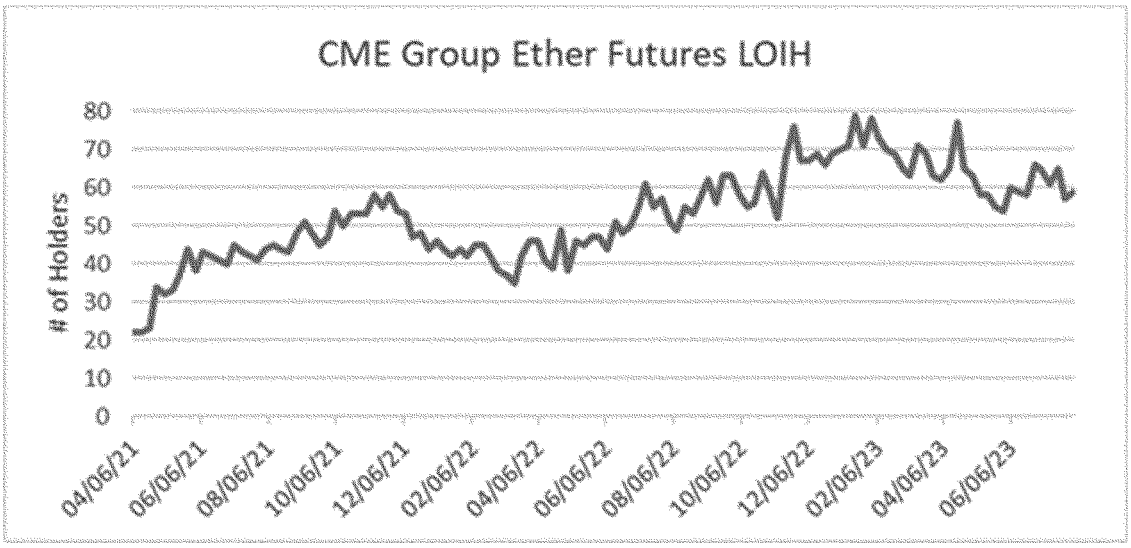
[23] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin Futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

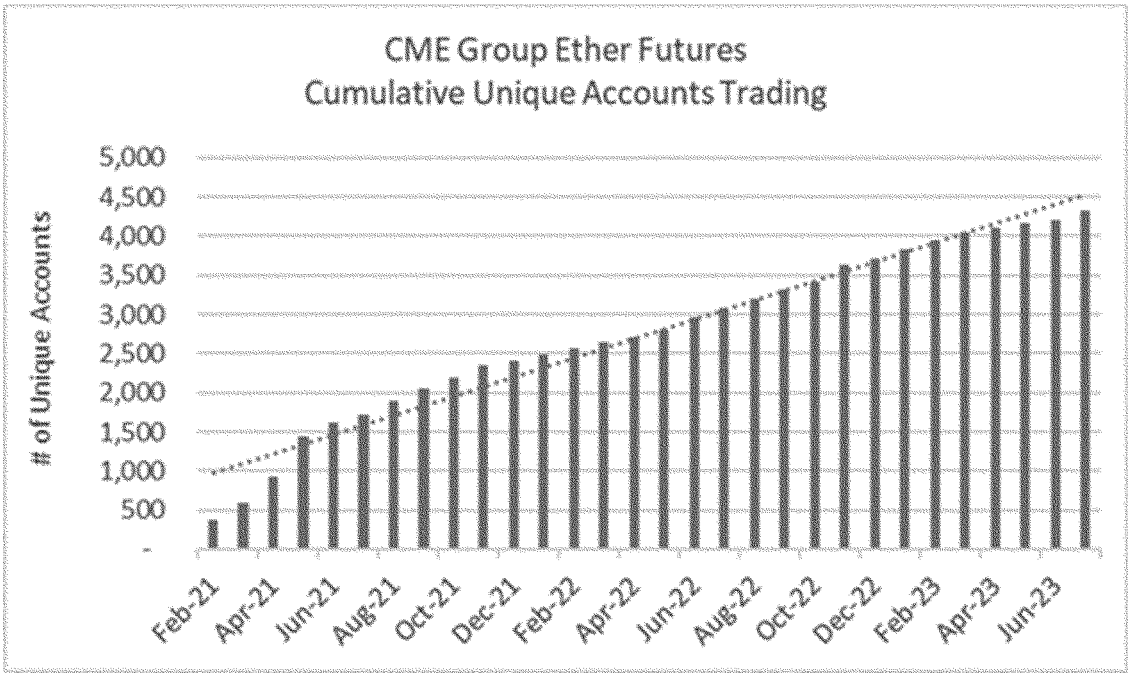
means of gaining exposure to ether through transparent, regulated, U.S. exchange-listed vehicles.

CME Ether Futures [24]

CME began offering trading in Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.[25] The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME Ether Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 76,293 CME Ether Futures contracts traded in July 2023 (approximately $7.3 billion) compared to 70,305 ($11.1 billion) and 158,409 ($7.5 billion) contracts traded in July 2021, and July 2022 respectively.[26] The Sponsor's research indicates daily correlation between the spot ETH and the CME Ether Futures is 0.998 from the period of 9/1/22 through 9/1/23.

The number of large open interest holders [27] and unique accounts trading CME Ether Futures have both increased, even in the face of heightened ether price volatility.



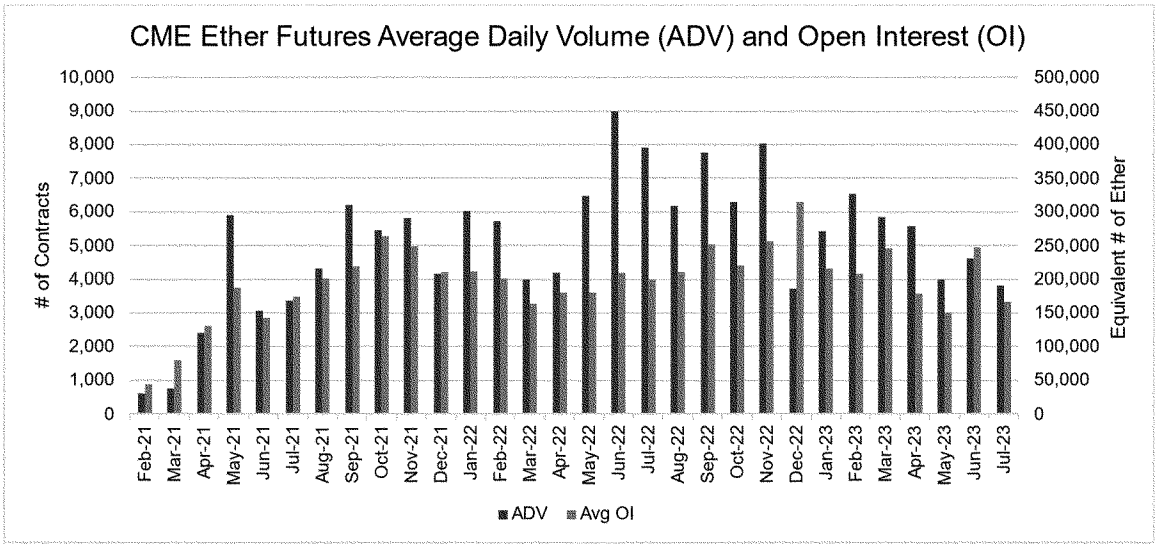


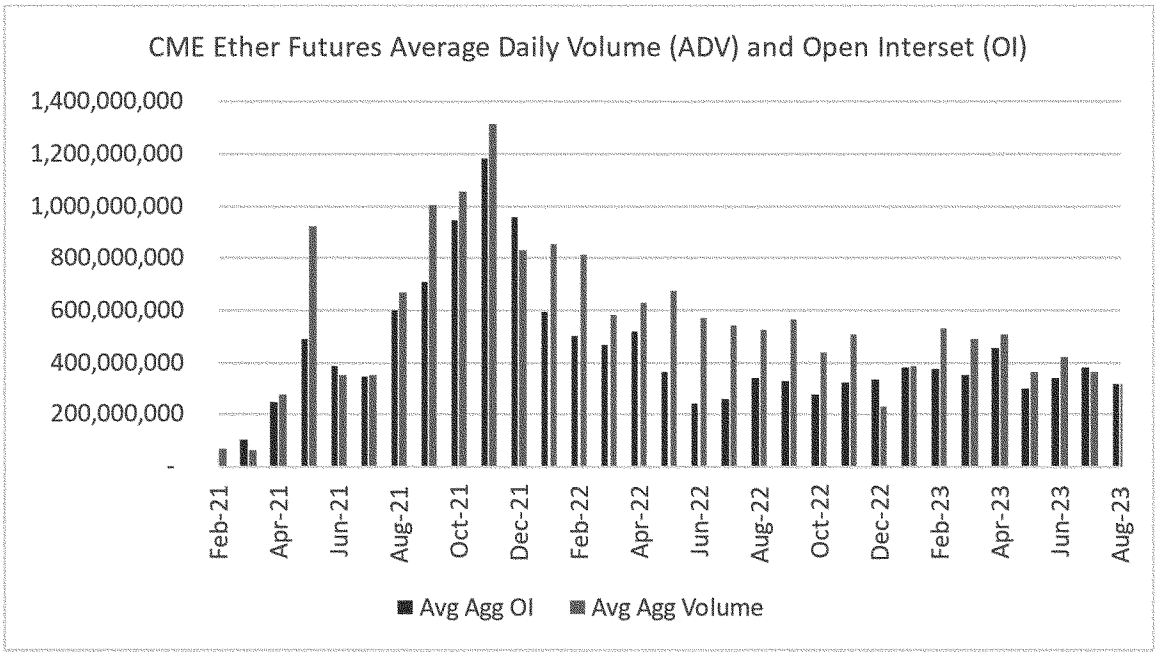
[24] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[25] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[26] Source: CME, 7/31/23

[27] A large open interest holder in CME Ether Futures is an entity that holds at least 25 contracts, which is the equivalent of 1,250 ether. At a price of approximately $1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than $2.3 million in CME Ether Futures.





Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[28] including Commodity-Based Trust Shares,[29] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [30] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently

[28] *See* Exchange Rule 14.11(f).

[29] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[30] The Exchange believes that ETH is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [31] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[32] The only remaining issue to be addressed is whether the Ether Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[33]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[34] [35]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order [36] also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

> . . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[37]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Ether Futures market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.[38] The Sponsor notes that ether total 24-hour spot trading volume has averaged $9.4 billion over the year ending September 1, 2023.[39] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ether market even in its most aggressive projections for the Trust's assets and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Order, ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and Sponsor agree with this sentiment and

[31] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[32] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[33] *See* Wilshire Phoenix Disapproval.

[34] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[35] According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), that provide exposure to ETH primarily through CME Ether Futures (''ETH Futures ETFs'') as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. *https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg.*

[36] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[37] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

[38] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[39] Source: TokenTerminal.

believe it applies equally to the spot ether and CME Ether Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC ETH Funds has grown. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

VanEck Ethereum ETF

Delaware Trust Company is the trustee (''Trustee''). The State Street Bank and Trust Company will be the administrator (''Administrator'') and transfer agent (''Transfer Agent'') and will be responsible for the custody of the Trust's cash and cash equivalents [40] (the ''Cash Custodian''). Van Eck Securities Corporation will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Creation Baskets'', as defined below, of Shares. A custodian (the ''Custodian'') will be responsible for custody of the Trust's ether.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets will only consist of ether, cash and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[41] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 25,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). A third party will use cash to buy and deliver ether to create Shares or withdraw and sell ether for cash to redeem Shares, on behalf of the Trust. For creations, authorized participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Trust, will submit an order to buy the amount of ether represented by a Creation Basket. Based off ether executions, the Cash Custodian will request the required cash from the authorized participant; the Transfer Agent will only issue ETF shares when the authorized participant has made delivery of the cash. Following receipt by the Cash Custodian of the cash from an authorized participant, the Sponsor, on behalf of the Trust, will approve an order with one or more previously onboarded trading partners to purchase the amount of ether represented by the Creation Basket. This purchase of ether will normally be cleared through an affiliate of the Custodian (although the purchase may also occur directly with the trading partner) and the ether will settle directly into the Trust's account at the Custodian.[42] Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is for the Shares to reflect the performance of ether less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold ether and will value its Shares daily based on the reported Benchmark and process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Benchmark

As described in the Registration Statement, the Fund will use the Benchmark to calculate the Trust's NAV. The Benchmark is designed to be a robust price for ETH in USD and there is no component other than ETH in the Benchmark. The underlying ether platforms are sourced from the industry leading CryptoCompare Exchange Benchmark review report. CryptoCompare Exchange Benchmark was established in 2019 as a tool designed to bring clarity to the digital trading platform sector by providing a framework for assessing risk and in turn bringing transparency and accountability to a complex and rapidly evolving market.[43] The current ether platform composition of the Benchmark is Bitstamp, Coinbase, Gemini, itBit, and Kraken. CryptoCompare Data Limited is the index sponsor and index administrator for the Benchmark. Data is the calculation agent for the Benchmark. The Benchmark is calculated daily between 00:00 and 24:00 (CET) and the Benchmark values are disseminated to

[40] Cash equivalents are short-term instruments with maturities of less than 3 months.

[41] 15 U.S.C. 80a–1.

[42] For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Trust, will submit an order to sell the amount of ether represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the 50,000 Shares are received by the Transfer Agent.

[43] The CryptoCompare Exchange Benchmark methodology utilizes a combination of qualitative and quantitative metrics to analyze a comprehensive data set across eight categories of evaluation legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The CryptoCompare Exchange Benchmark review report assigns a grade to each exchange which helps identify what it believes to be the lowest risk exchanges in the industry. Based on the CryptoCompare Exchange Benchmark, MarketVector Indexes initially selects the top five exchanges by rank for inclusion in the MarketVector™ Ethereum Benchmark Rate. If an eligible exchange is downgraded by two or more notches in a semi-annual review and is no longer in the top five by rank, it is replaced by the highest ranked non-component exchange. Adjustments to exchange coverage are announced four business days prior to the first business day of each of June and December 23:00 CET. The MarketVector™ Ethereum Benchmark Rate is rebalanced at 16:00:00 GMT/BST on the last business day of each of May and November.

data vendors every fifteen seconds. The Benchmark is disseminated in USD and the closing value is calculated at 16:00:00 ET with fixed 16:00 ether platform rates.

In calculating the closing price of the Benchmark, the methodology captures trade prices and sizes from ether platforms and examines twenty three-minute periods leading up to 4:00 p.m. EST. It then calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods, removing the highest and lowest contributed prices. Using twenty consecutive three-minute segments over a sixty-minute period means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across ether platforms, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot ETH volume in a three-minute window to have any influence on the NAV. As discussed in the Registration Statement, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple ether platforms at once to have any ability to influence the price.

Net Asset Value

NAV means the total assets of the Trust (which includes all ether, cash, and cash equivalents) less total liabilities of the Trust. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET based on the Benchmark. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the NAV, the Administrator values the Shares of the Trust based on the closing price of the Benchmark as of 4:00 p.m. Eastern time. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. The Sponsor will monitor for significant events related to crypto assets that may impact the value of ether and will determine, in good faith, and in accordance with its valuation policies and procedures, whether to fair value the Trust's ether on a given day based on whether certain pre-determined criteria have been met. For example, if the Benchmark deviates by more than a pre-determined amount from an alternate benchmark available to the Sponsor, the Sponsor may determine to utilize an alternate benchmark, such as the MarketVector™ Ethereum Index or the S&P Ethereum Index. The Sponsor may also fair value the Trust's ether using observed market transactions from various trading platforms, including some or all of the trading platforms included in the Benchmark.[44]

Availability of Information

In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[45] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Sponsor's website at *www.vaneck.com,* or any successor thereto. The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value (''IIV'') will be updated during Regular Trading Hours to reflect changes in the value of the Trust's ether holdings during the trading day. The IIV may differ from the NAV because NAV is calculated, using the closing price of the Benchmark, once a day at 4:00 p.m. Eastern time whereas the IIV draws prices from the last trade on each ether platform to produce a relevant, real-time price. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Benchmark is calculated every 15 seconds and information about the Benchmark and Benchmark value, including index data and key elements of how the Benchmark is calculated, will be publicly available at *https://www.marketvector.com/.*

Quotation and last sale information for ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ether is available from major market data vendors and from the trading platforms on which ether are traded. Depth of book information is also available from ether trading platforms. The normal trading hours for ether trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading

[44] Any alternative method to determining NAV will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[45] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

volume information for the Shares will be published daily in the financial section of newspapers.

The Custodian

The Custodian's services (i) allow ETH to be deposited from a public blockchain address to the Trust's ETH account and (ii) allow ETH to be withdrawn from the ETH account to a public blockchain address as instructed by the Trust. The custody agreement requires the Custodian to hold the Trust's ETH in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage ETH addresses for the Trust which are separate from the ETH addresses that the Custodian uses for its other customers and which are directly verifiable via the ETH blockchain. The Custodian will safeguard the private keys to the ETH associated with the Trust's ETH account. The Custodian will at all times record and identify in its books and records that such ETH constitutes the property of the Trust. The Custodian will not withdraw the Trust's ETH from the Trust's account with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's ETH, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian and the Trust may enter into a custodian agreement with such custodian.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 25,000 Shares that are based on the amount of ether held by the Trust on a per unit (*i.e.,* 25,000 Share) basis. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required to create each Creation Unit is an amount of cash that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Administrator determines the required deposit for a given day by dividing the number of ether held by the Trust as of the opening of business on that business day, adjusted for the amount of ether constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Unit.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive ether as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving ether as part of the creation or redemption process.

The Trust will create shares by receiving ether from a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to facilitate the delivery of the ether. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the ether to the Trust or acting at the direction of the authorized participant with respect to the delivery of the ether to the Trust. When fulfilling a redemption request, the Trust will deliver ether to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting such third party to receive the ether. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the ether from the Trust or acting at the direction of the authorized participant with respect to the receipt of the ether from the Trust.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver ether to create Shares or withdraw and sell ether for cash to redeem Shares, on behalf of the Trust.

The Sponsor will maintain ownership and control of ether in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [46] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange

[46] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying ether, Eth Futures contracts, options on Eth Futures, or any other ether derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the ether underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Benchmark is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Benchmark occurs. If the interruption to the dissemination of the IIV or the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Ether Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Ether Futures from such markets and other entities.[47] The Exchange may obtain information regarding trading in the Shares and Eth Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[48] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing

[47] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[48] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding ether, that the Commission has no jurisdiction over the trading of ether as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Ether Futures contracts and options on Ether Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [49] in general and Section 6(b)(5) of the Act [50] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Commission has approved numerous series of Trust Issued Receipts,[51] including Commodity-Based Trust Shares,[52] to be listed on U.S. national securities. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [53] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [54] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[55] The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[56]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[57]

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order [58] also

[49] 15 U.S.C. 78f.

[50] 15 U.S.C. 78f(b)(5).

[51] *See* Exchange Rule 14.11(f).

[52] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[53] The Exchange believes that ETH is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[54] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[55] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[56] *See* Wilshire Phoenix Disapproval.

[57] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[58] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-

indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that:

> . . . fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME . . . can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.[59]

The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME ''can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Ether Futures market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.[60] The Sponsor notes that ether total 24-hour spot trading volume has averaged $9.4 billion over the year ending September 1, 2023.[61] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ether market even in its most aggressive projections for the Trust's assets and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Order, ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ether and CME Ether Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ether through OTC ETH Funds has grown. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ether in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Ether Futures ETFs and operating companies that are imperfect proxies for ether exposure; and (iv) providing an alternative to custodying spot ether.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ether derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[62] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business

Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

[59] *See* the Spot Bitcoin ETP Approval Order at 3011–3012.

[60] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[61] Source: TokenTerminal.

[62] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

available on the Sponsor's website at *www.vaneck.com,* or any successor thereto. The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value (''IIV'') will be updated during Regular Trading Hours to reflect changes in the value of the Trust's ether holdings during the trading day. The IIV may differ from the NAV because NAV is calculated, using the closing price of the Benchmark, once a day at 4:00 p.m. Eastern time whereas the IIV draws prices from the last trade on each ether platform to produce a relevant, real-time price. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Benchmark is calculated every 15 seconds and information about the Benchmark and Benchmark value, including index data and key elements of how the Benchmark is calculated, will be publicly available at *https://www.marketvector.com/.*

Quotation and last sale information for ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in ether is available from major market data vendors and from the trading platforms on which ether are traded. Depth of book information is also available from ether trading platforms. The normal trading hours for ether trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Ether ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to ether by providing direct, 1-for-1 exposure to ether in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Ether Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for ether exposure; and (v) providing an alternative to custodying spot ether. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Ether Futures ETFs and premium/discount volatility and management fees for OTC ETH Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the CME Ether Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Ether Futures market is a significant market as it relates to the CME Ether Futures market, but not a significant market as it relates to the ether spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

Section 19(b)(2) of the Act[63] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on September 26, 2023.[64] The 180th day after publication of the proposed rule change is March 24, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as

[63] 15 U.S.C. 78s(b)(2).

[64] *See supra* note 3 and accompanying text.

modified by Amendment No. 1, and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[65] designates May 23, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2023–069).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–CboeBZX–2023–069 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–2023–069. 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–2023–069 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Sherry Haywood,

Assistant Secretary.

[FR Doc. 2024–06319 Filed 3–25–24; 8:45 am]

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[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12), (57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99783; File No. SR–NASDAQ–2024–012]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3

March 20, 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 7, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 Nasdaq Options Market LLC's (''NOM'') Rules at Options 7, Section 3, Nasdaq Options Market—Ports and Other Services.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–NASDAQ–2023–050) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–NASDAQ–2023–050 and placed it with SR–NASDAQ–2023–054. On January 16, 2023, the Exchange withdrew SR–NASDAQ–2023–054 and submitted SR–NASDAQ–2024–003. On March 7, 2024, the Exchange withdrew SR–NASDAQ–2024–003 and submitted this filing.

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 Options 7, Section 3, Nasdaq Options Market—Ports and Other Services. Specifically, the Exchange proposes to amend Options 7, Section 3(i) to increase the per port, per month SQF Port [4] and SQF Purge [5] Port Fees for all ports over 20 ports (21 and above) from $500 to $750.[6]

Today, NOM assesses SQF Ports and SQF Purge Ports a per port, per month fee based on a tiered fee schedule. Specifically, NOM assesses an SQF Port and an SQF Purge Port fee of $1,500 per port, per month for the first 5 ports (1–5), a $1,000 per port, per month fee for the next 15 ports (6–20), and a $750 per port, per month fee for all ports over 20 ports (21 and above).

At this time, the Exchange proposes to amend the per port, per month fee for SQF Ports and SQF Ports above 20 ports

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1) and (a)(2), and (b)(2), respectively. *See* Options 3, Section 7(e)(1)(B).

[5] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the NOM Market Maker.

[6] The Exchange also proposes a technical amendment to remove an extraneous period in Options 7, Section 3 in the second paragraph.

(21 and above) from $500 to $750 per port, per month. The Exchange is not amending the SQF Port and SQF Purge Port fees for ports below 20 ports.

Pursuant to Options 3, Section 7(e)(1)(B), NOM Market Makers may only enter interest into SQF in their assigned options series. Pursuant to Options 3, Section 7(e)(1)(B), the SQF interface allows NOM Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. A NOM Market Maker requires only one SQF Port to submit quotes in its assigned options series into NOM. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A NOM Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a NOM Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[7] only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from $500 to $750 per port, per month is reasonable because SQF Ports and SQF Purge Ports over 20 ports are unnecessary for a NOM Market Maker to fulfill its regulatory requirements.[11] A NOM Market Maker requires only one SQF Port to submit quotes in its assigned options series into NOM. A NOM Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a NOM Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[12] only one SQF Port and SQF Purge Port is necessary for a NOM Market Maker to fulfill its regulatory quoting obligations. Participants may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Participant's particular business model. Additionally, the Exchange believes the proposed SQF Port and SQF Purge Port fee increases are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. NOM must manage the security and message traffic, among other things, for each port. Amending the SQF Port and SQF Purge Port tiered fees to manage a Market Maker's costs while also managing the quantity of SQF Ports and SQF Purge Ports issued on NOM has led the Exchange to increase the tier for all ports over 20 ports to $750 per port, per month. Lowering the fee for SQF Ports and SQF Purge Ports over 20 ports allows the Exchange to manage message traffic and message rates associated with the current number of outstanding SQF Port and SQF Purge Ports and consider the Exchange's ability to process messages. The ability to manage ports through pricing permits the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (''Cboe'') limits usage on each port and assesses fees for incremental usage.[13]

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to lower their fees for SQF Ports and SQF Purge Ports over 20 ports, per month. NOM believes that lowering costs for ports beyond 20 ports allows for efficiencies and permits Market Makers to increase their number of ports beyond the 20 ports. Lowering the SQF Port and SQF Purge Port fees, per month, beyond 20 ports allows those Market Makers that want to obtain a larger number of SQF Port and SQF Purge ports to do so at a lower cost. In this case, the Exchange is raising the current SQF Port and SQF Purge Port Fee for over 20 ports from $500 to $750 per port, per month. Despite the increase, Market Makers will continue to pay less for over 20 SQF Port and SQF Purge Ports per month if they desire to obtain multiple ports on NOM. BOX Exchange LLC (''BOX'') assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[14] Miami International Securities Exchange's (''MIAX'') MIAX Express Interface (''MEI'') Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[15]

The number of ports that members choose to purchase varies widely. Today, on NOM, 3 Market Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker has 2–5 SQF Ports/SQF Purge Ports, 3 Market Makers have between 6–10 SQF Ports/SQF Purge Ports, and 11 Market Makers have more than 10 SQF Ports/SQF Purge Ports. The chart below represents the number of SQF Ports and SQF Purge Ports that are subscribed to by members across the six Nasdaq affiliated options markets.

[7] For example, a NOM Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that NOM Participant. The Exchange notes that 78% of NOM Market Makers pay the $1,000 per port, per month fee for 6–20 ports and 39% pay the proposed $750 per port, per month fee for over 20 ports.

[8] NOM Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, NOM Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. The Exchange notes that SQF Ports are the only quoting protocol available on NOM and only NOM Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

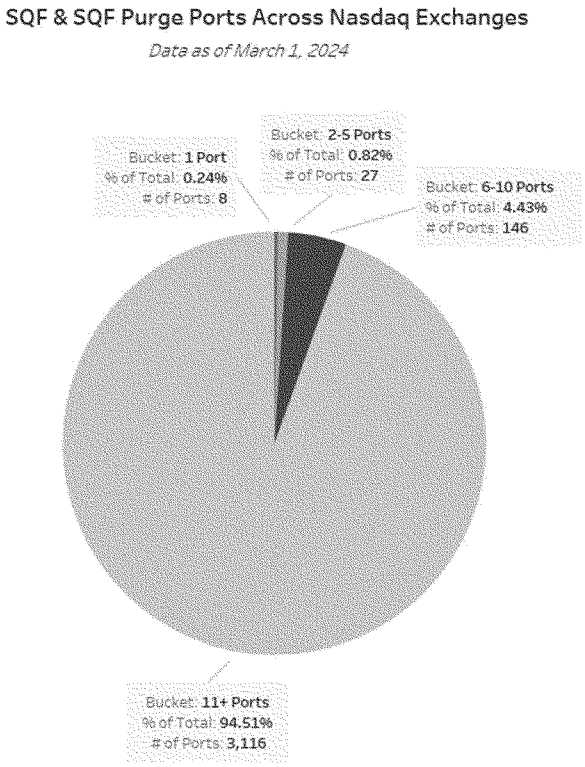
[11] *See* NOM Options 2, Sections 4 and 5.

[12] For example, a NOM Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

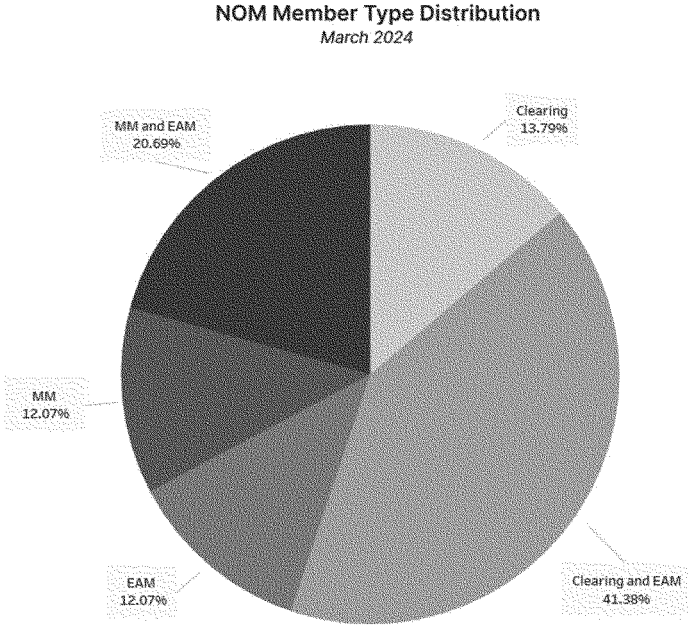
[13] Each Cboe Binary Order Entry (''BOE'') or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. *See* Cboe's Fees Schedule.

[14] *See* BOX's Fee Schedule.

[15] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.



The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from $500 to $750 per port, per month is equitable and not unfairly discriminatory because all NOM Market Makers would be assessed the same fees for SQF Ports and SQF Purge Ports to the extent that these NOM Market Makers have subscribed to more than 20 SQF Ports or SQF Purge Ports. NOM Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. The following chart represents the classification of NOM Members and the percentage of Market Makers.



Unlike other market participants, NOM Market Makers are subject to market making and quoting obligations.[16] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to NOM on a continuous basis. Providing NOM Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at a lower cost beyond 20 ports enables these market participants to provide the necessary liquidity to NOM at lower costs. Therefore, because NOM Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent NOM Market Makers to quote on NOM, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[17] In that rule change,[18] NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[19]

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its lower SQF Ports and SQF Purge Port monthly fees beyond 20 ports is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fees is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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.

Intermarket Competition

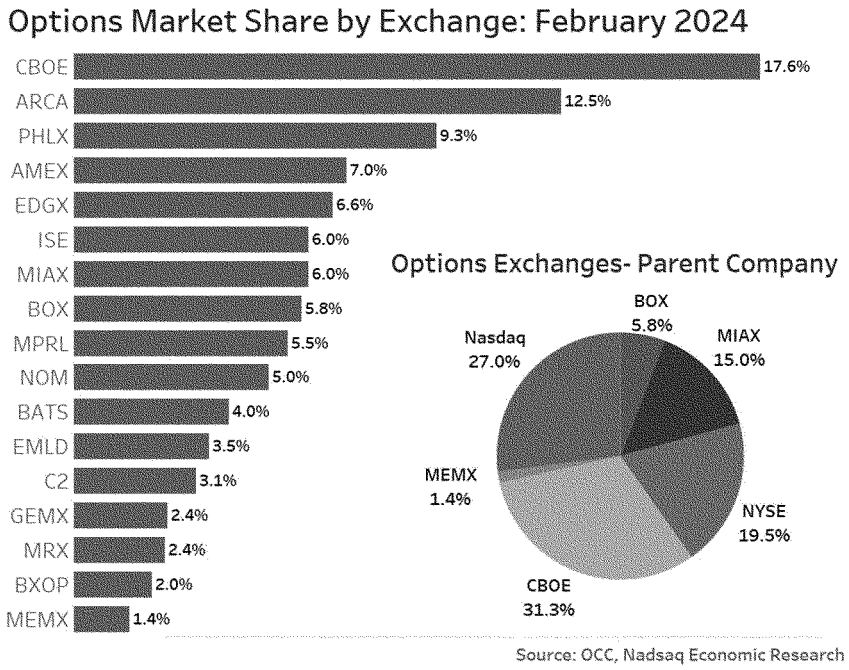
The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.

[16] *See* Options 2, Sections 4 and 5.

[17] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[18] *Id* at 38788.

[19] *Id* at 38790.



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Other exchanges amended certain costs attributed to NOM Market Makers.[20] In 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[21] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [22] Additionally, BOX assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[23] MIAX's MEI Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[24]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair NOM's ability to compete among other options markets.

Intramarket Competition

The Exchange believes that increasing the fee for SQF Ports and SQF Purge Ports over 20 ports (21 and above) from $500 to $750 per port, per month does not impose an undue burden on competition because all NOM Market Makers would be assessed the same fees for SQF Ports and SQF Purge Ports to the extent that these NOM Market Makers have subscribed to more than 20 SQF Ports or SQF Purge Ports. NOM Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants, NOM Market Makers are subject to market making and quoting obligations.[25] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to NOM on a continuous basis. Providing NOM Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at a lower cost beyond 20 ports enables these market participants to provide the necessary liquidity to NOM at lower costs. Therefore, because NOM Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed lower monthly SQF Fee and SQF Purge Port fee is designed to continue to incent NOM Market Makers to quote on NOM, thereby promoting liquidity, quote competition, and trading opportunities.

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.

[20] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[21] *See* Securities Exchange Act No. 96824(February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[22] *Id* at 8976.

[23] *See* BOX's Fee Schedule.

[24] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.

[25] *See* Options 2, Sections 4 and 5.

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.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–012 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–NASDAQ–2024–012. 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–NASDAQ–2024–012 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06320 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99810; File No. SR–NYSENAT–2024–09]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 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 8, 2024, NYSE National, Inc. (''NYSE National'' 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users[4] with wireless connectivity to MEMX LLC (''MEMX'') market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the ''Existing Third Party Data''),[5] and wired connections to more than 45 market data feeds or combinations of feeds.[6] The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed[7] (''MEMX Data'' and, together with the Existing Third Party Data, the ''Third Party Data''). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–15, SR–NYSEAMER–2024–18, SR–NYSEARCA–2024–26, and SR–NYSECHX–2024–11.

[5] *See* 83 FR 26314, *supra* note 4, at 26319–20.

[6] *See id.* at 26322–23.

[7] MEMX Data would also include the test feed for MEMX Memoir market data.

in the Mahwah, New Jersey data center (''MDC'').[8]

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange's proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, ''[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.'' [9]

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (''Single Port Third Party Data''), it would not receive an additional port for the MEMX Data, as one would not be needed.[10] Rather, the User would be able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any colocation service, including connectivity to Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. 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.'' [11]

The Exchange understands that the third party Quincy Data LLC (''Quincy'') [12] already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange's proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [16] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [17] Here, the

[8] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

[9] Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

[10] Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* Securities Exchange Act Release Nos. 80215 (February 28, 2017), 82 FR 12658 (March 6, 2017) (SR–NYSE–2017–05); and 98966 (November 16, 2023), 88 FR 81476 (November 22, 2023) (SR–NYSENAT–2023–26).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.[18] Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[19] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.[20]

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the ''Patch Panel Point'') is normalized[21] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms (''Telecoms'').[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange

[18] Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

[19] *See* 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

[20] The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

[21] *See* NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

[22] *Id.*

[23] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[24] *See* Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR–NYSENAT–2023–12) (''MMR Notice'').

[25] *See id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[26] *See* Wireless Approval Order, *supra* note 16.

believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[27]

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.[28] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in

[27] 15 U.S.C. 78f(b)(8).

[28] *See* supra note 21.

colocation be the same.[29] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[30] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [31] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[32] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

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 [33] and Rule 19b–4(f)(6) thereunder.[34] 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.

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) [35] 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–NYSENAT–2024–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2024–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–NYSENAT–2024–09 and should be submitted on or before April 16, 2024.

[29] *See id.*

[30] *See supra* note 23.

[31] *See* MMR Notice, *supra* note 24.

[32] *See supra* note 25.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06345 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99806; File No. SR–NYSE–2024–15]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 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 8, 2024, New York Stock Exchange LLC (''NYSE'' 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users[4] with wireless connectivity to MEMX LLC (''MEMX'') market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the ''Existing Third Party Data''),[5] and wired connections to more than 45 market data feeds or combinations of feeds.[6] The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed[7] (''MEMX Data'' and, together with the Existing Third Party Data, the ''Third Party Data''). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (''MDC'').[8]

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange's proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, ''[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.''[9]

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (''Single Port Third Party Data''), it would not receive an additional port for the MEMX Data, as one would not be needed.[10] Rather, the User would be able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or

[36] 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] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2024–18, SR–NYSEARCA–2024–26, SR–NYSECHX–2024–11, and SR–NYSENAT–2024–09.

[5] *See* Securities Exchange Act Release Nos. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52); 78378 (July 21, 2016), 81 FR 49315 (July 27, 2016) (SR–NYSE–2016–49); and 80215 (February 28, 2017), 82 FR 12658 (March 6, 2017) (SR–NYSE–2017–05).

[6] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45).

[7] MEMX Data would also include the test feed for MEMX Memoir market data.

[8] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

[9] Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

[10] Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* 82 FR 12658, *supra* note 5, at note 8, and Securities Exchange Act Release No. 98962 (November 16, 2023), 88 FR 81485 (November 22, 2023) (SR–NYSE–2023–44).

sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any colocation service, including connectivity to Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. 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.'' [11]

The Exchange understands that the third party Quincy Data LLC (''Quincy'') [12] already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange's proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . including the level of any fees.'' [16] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [17] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.[18] Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[19] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.[20]

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the ''Patch Panel Point'') is normalized.[21]

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Further, all distances in the

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

[18] Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

[19] *See* 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

[20] The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

[21] *See* NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

[22] *See id.*

MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms (''Telecoms'').[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The

[23] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[24] *See* Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR–NYSE–2023–27) (''MMR Notice'').

[25] *See id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[26] *See* Wireless Approval Order, *supra* note 16.

proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[27]

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.[28] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[29] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[30] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[31] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[32] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal

[27] 15 U.S.C. 78f(b)(8).

[28] *See supra* note 21.

[29] *See id.*

[30] *See supra* note 23.

[31] *See* MMR Notice, *supra* note 24.

[32] *See supra* note 25.

fee change in a filing before the Commission.

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 [33] and Rule 19b–4(f)(6) thereunder.[34] 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.[35]

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) [36] 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–NYSE–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–NYSE–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 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–NYSE–2024–15 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

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[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99789; File No. SR–NYSE–2024–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31

March 20, 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 6, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31 to provide for the use of Day ISO Reserve Orders and make other conforming changes. 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 7.31 to provide for the use of Day

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

ISO Reserve Orders and make conforming changes in Rule 7.11 (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) and Rule 7.37 (Order Execution and Routing).

Day ISO Orders

Rule 7.31(e)(3) defines an Intermarket Sweep Order (''ISO'') as a Limit Order that does not route and meets the requirements of Rule 600(b)(38) of Regulation NMS. As described in Rules 7.31(e)(3)(A) and subparagraphs (i) and (ii) thereunder, an ISO may trade through a protected bid or offer and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market, provided that (1) it is identified as an ISO and (2) simultaneously with its routing to the Exchange, the member organization that submits the ISO also routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets.

Rule 7.31(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time the order arrived.

Reserve Orders

Rule 7.31(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (''reserve interest'') of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31(d)(2)(A).

As described in Rule 7.31(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different working time is referred to as a ''child'' order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with the following order types: D Order, Non-Routable Limit Order, or Primary Pegged Order.

Rule 7.31(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31(e)(1) relating to Non-Routable Limit Orders or, for an ALO Order designated as Reserve, as provided for under Rule 7.31(e)(2)(E).

Day ISO Reserve Orders

The Exchange proposes to amend Rule 7.31 to provide for the use of Day ISO Reserve Orders. The proposed change is not intended to modify any current functionality, but would instead facilitate the combination of two order types currently offered by the Exchange to offer increased efficiency to member organizations. As proposed, Day ISO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31(d)(1) regarding Reserve Orders and current Rule 7.31(e)(3)(C) regarding Day ISO Orders. To allow for the use of Day ISO Reserve Orders, the Exchange first proposes to amend Rule 7.31(d)(1)(C) to include Day ISO Orders among the order types that may be designated as Reserve Orders.

The proposed change is intended to allow Day ISO Orders, as described in Rule 7.31(e)(3)(C),[4] to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31(d)(1). The display quantity of a Day ISO Reserve Order would be replenished as provided in Rules 7.31(d)(1)(A) and (B), except that the Exchange proposes to add new rule text to Rule 7.31(d)(1)(B)(ii), which currently provides that the replenish quantity of a non-routable Reserve Order will be assigned a display and working price consistent with the instructions for the order. Because Day ISO Reserve Orders would be non-routable but could not be replenished at their limit price given the specific requirements for ISOs (as described above),[5] the Exchange proposes to amend Rule 7.31(d)(1)(B)(ii) to specify that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order, as provided for under paragraph (e)(1) of this Rule.

As currently described in Rule 7.31(e)(3)(C), a Day ISO Reserve Order, if marketable on arrival, would immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Currently, Rule 7.31(e)(3)(C) further provides that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. The Exchange proposes two changes to Rule 7.31(e)(3)(C) to reflect the operation of Day ISO Reserve Orders:

[4] The Exchange does not currently propose to allow Day ISO ALO Orders (as defined in Rule 7.31(e)(3)(D)) to be designated as Reserve Orders. Accordingly, the Exchange proposes to amend Rule 7.31(e)(3)(D) to specify that Day ISO ALOs may not be so designated.

[5] Consistent with the requirements for ISOs and the Exchange's existing rules governing Day ISOs, a Day ISO Reserve Order, as proposed, would only behave as an ISO upon arrival and would not otherwise be permitted to trade through a protected bid or offer or lock or cross an Away Market.

• The Exchange proposes to amend the second sentence of Rule 7.31(e)(3)(C) to specify that reserve interest of a Day ISO Reserve Order would not be displayed at its limit price because reserve interest is, by definition, non-displayed and would instead rest non-displayed on the Exchange Book at the order's limit price.

• The Exchange proposes to add new subparagraph (i) under Rule 7.31(e)(3)(C) to offer member organizations the ability to designate a Day ISO Reserve Order to be cancelled if, upon replenishment, it would be displayed at a price other than its limit price for any reason. The Exchange notes that it does not offer this option for Day ISOs not designated as Reserve Orders because such orders would never be displayed at a price other than their limit price. By contrast, a Day ISO Reserve Order could be repriced upon replenishment as described in Rule 7.31(d)(1)(B)(ii) (as modified by this filing to include Day ISOs designated as Reserve Orders, discussed below).

This proposed change would provide member organizations with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when Day ISO Reserve Orders would be repriced to display at a price other than their limit price upon replenishment. This designation would be optional, and if not designated to cancel, Day ISO Reserve Orders would function as otherwise described in this filing. The Exchange notes that it already makes this option available for other order types and believes that offering it to Day ISO Reserve Orders would promote consistency in Exchange rules.[6]

The working price of the reserve interest of a resting Day ISO Reserve Order would be adjusted as provided for in Rule 7.31(d)(1). Rule 7.31(d)(1)(E) would also apply to requests to reduce the size of Day ISO Reserve Orders.

Rule 7.31(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBBO uncrosses, the display price and working price of a Reserve Order will be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders. The Exchange proposes to amend Rule 7.31(d)(1)(F) to provide that the rule would likewise apply to a Reserve Order that is a Day ISO. The Exchange further notes that this proposed change is consistent with the proposed change to Rule 7.31(d)(1)(B)(ii), which similarly provides that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order.

Finally, the Exchange proposes conforming changes to Rule 7.11(a)(5) and Rule 7.37(g)(2) to reflect the operation of Day ISO Reserve Orders.

Rule 7.11(a)(5) sets forth rules governing how Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Bands consistent with the Limit Up-Limit Down Plan. Rule 7.11(a)(5)(ii) currently provides that if the Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled. The Exchange proposes to amend Rule 7.11(a)(5)(ii) to clarify its applicability to any portion of a resting Day ISO that is designated Reserve. Thus, if the Price Bands move and the working price of any portion of a resting Day ISO Reserve Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the entirety of the Day ISO Reserve Order would be cancelled.

Rule 7.37(g)(2) describes the ISO exception to the Order Protection Rule. Rule 7.37(g)(2)(A) provides that the Exchange will accept ISOs to be executed in the Exchange Book against orders at the Exchange's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation. Rule 7.37(g)(2)(B) provides that, if an ISO is marked as ''Immediate-or-Cancel,'' any portion of the order not executed upon arrival will be automatically cancelled; if an ISO is not marked as ''Immediate-or-Cancel,'' any balance of the order will be displayed without regard to whether that display would lock or cross another market center, so long as the order complies with Rule 7.37(f)(3)(C).[7] The Exchange proposes to amend Rule 7.37(g)(2)(B) to specify that, for an ISO not marked as ''Immediate-or-Cancel,'' any displayed portion of such order would be displayed, and any non-displayed portion would remain on the Exchange Book. This proposed change is intended to clarify that the reserve interest of a Day ISO Reserve Order would not be displayed, but could, on arrival only, rest non-displayed at a price that would lock or cross another market center if the member organization has complied with Rule 7.37(f)(3)(C).

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing member organizations with enhanced flexibility, optionality, and efficiency when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality similar to that available on at least one other equities exchange, thereby promoting competition among equities exchanges.[8]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the second quarter of 2024.

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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order

[6] *See, e.g.,* Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D) (permitting Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders, respectively, to be designated to cancel if they would be displayed at a price other than their limit price for any reason).

[7] Rule 7.37(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations described in Rule 7.37(e)(2) does not apply when the Locking or Crossing Quotation was an Automated Quotation, and the member organization displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

[8] *See, e.g.,* Nasdaq Stock Market LLC Rule 4702(b)(1)(C) (describing Price to Comply Order, which may be designated with both reserve size and as an ISO).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

types available on the Exchange and permit the Exchange to offer functionality similar to that already available on at least one other equities exchange.[11] Member organizations would be free to choose to use the proposed Day ISO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to member organizations when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange[12] and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

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 Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The proposal would allow the Exchange to offer functionality similar to that already available on at least one other equities exchange.[17] Member organizations would have the option to use the proposed Day ISO Reserve Order type, and the proposed change would not otherwise alter the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. Therefore, the Commission waives the 30-day operative delay and designates the proposal 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–NYSE–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–NYSE–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–NYSE–2024–14 and should be submitted on or before April 16, 2024.

[11] *See* note 8, *supra.*

[12] *See id.*

[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).

[17] *See* note 8, *supra.*

[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).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06326 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99784; File No. SR–MRX–2024–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Regular Taker Fees in the Exchange's Pricing Schedule at Options 7, Section 3

March 20, 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 12, 2024, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

The Exchange initially filed the proposed pricing changes on March 1, 2024 (SR–MRX–2024–06). On March 12, 2024, the Exchange withdrew that filing and replaced it with this filing.

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange charges tiered taker fees to Priority Customer [3] orders in Penny Symbols that range from: $0.15 (Tier 1 through Tier 3) to $0.10 (Tier 4). For Non-Penny Symbols, Priority Customer orders are assessed tiered taker fees that range from: $0.35 (Tier 1), $0.25 (Tier 2), $0.15 (Tier 3), and $0.10 (Tier 4).

The Exchange now proposes a number of changes to the Priority Customer taker fees. First, the Exchange proposes to increase the Priority Customer taker fees in Penny Symbols to $0.20 per contract across Tiers 1–4. Second, the Exchange proposes to increase the Priority Customer taker fees in Non-Penny Symbols to $0.40 per contract across Tiers 1–4. Third, the Exchange proposes to reduce the proposed Priority Customer taker fees from $0.20 to $0.10 per contract (Penny Symbols) and from $0.40 to $0.20 per contract (Non-Penny Symbols) for Members that execute Total Affiliated Member [4] or Affiliated Entity [5] Priority Customer ADV [6] of 0.30% Customer Total Consolidated Volume [7] in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month.[8]

Lastly, the Exchange proposes non-substantive, technical edits in Options 7, Section 3, Table 1 to add parentheses around the note 6 references appended to the Priority Customer taker fees in Penny Symbols to correct a formatting error in the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* 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

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

[4] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

[5] An ''Affiliated Entity'' is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

[6] Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers. *See* note 4 of Options 7, Section 3, Table 1.

[7] ''Customer Total Consolidated Volume'' means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[8] *See* proposed note 7 of Options 7, Section 3, Table 1.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

of order flow from broker dealers'. . . .'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to the regular taker fees in the manner described above are reasonable for several reasons. While the Exchange is proposing to increase the Priority Customer taker fees in Tiers 1 through 4 to $0.20 per contract in Penny Symbols and $0.40 per contract in Non-Penny Symbols, the Exchange believes that its taker fees remain competitive and lower than other options exchanges.[13] The Exchange also believes that despite the increase, its pricing structure will remain attractive for Priority Customer orders because the Exchange will also offer market participants the opportunity to reduce the proposed taker fees by half if they meet the proposed volume qualifications in new note 7 of Options 7, Section 3, Table 1. As discussed above, note 7 will provide that Members that execute Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.30% Customer Total Consolidated Volume in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month will be assessed: (1) a $0.10 per contract Priority Customer Taker Fee in Penny Symbols; and (2) a $0.20 per contract Priority Customer Taker Fee in Non-Penny Symbols. By tying the discounted Priority Customer taker fees in note 7 to Affiliated Member and Affiliated Entity volume, the Exchange believes that Members may be incentivized to aggregate volume and bring more Priority Customer regular order flow to MRX to qualify for the note 7 incentives. In addition, the Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing Member activity on MRX over time. Total industry percentage thresholds are established concepts within the Exchange's Pricing Schedule.[14] As with its existing percentage thresholds, the Exchange is proposing to base the discounted Priority Customer taker fee volume requirements on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualification in note 7 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.30% Customer Total Consolidated Volume is intended to reward Members for executing more Priority Customer regular volume on MRX. To the extent Priority Customer activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on the Exchange to the benefit of all market participants.

Further, the Exchange believes that the proposal described above is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. With the proposed changes, Priority Customers will continue to be assessed lower regular order taker fees than any other market participant on the Exchange, with opportunity to further reduce these fees by qualifying for the proposed note 7 incentives. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing for Priority Customers because the proposed changes are intended to increase Priority Customer regular order flow to MRX. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Lastly, the Exchange believes that the non-substantive, technical edits in Options 7, Section 3, Table 1 described above are consistent with the Act as they are intended to correct a formatting error in the Exchange's Pricing Schedule.

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. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes described above will apply directly to Priority Customers, the Exchange believes that these changes will ultimately encourage increased activity on the Exchange to the extent the proposal incentivizes more Priority Customer regular order volume to be executed on MRX. All Members will benefit from any increase in market activity that the proposal effectuates through increased trading opportunities and price discovery.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are

[11] *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–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] For example, Cboe C2 Options (''C2'') charges Public Customers a $0.43 per contract fee for removing liquidity in Penny Classes and a $0.85 per contract fee for removing liquidity in Non-Penny Classes. *See* C2 Fee Schedule at: *https://www.cboe.com/us/options/membership/fee_schedule/ctwo/.* In addition, MIAX Emerald charges Priority Customers a $0.50 per contract taker fee in Penny Classes and a $0.85 per contract taker fee in Non-Penny Classes. See MIAX Emerald Fee Schedule at: *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02262024.pdf.*

[14] For instance, the qualifying tier thresholds for the Exchange's regular order maker/taker pricing in Table 1 are currently based on Customer Total Consolidated Volume percentages. *See* Options 7, Section 3, Table 3.

unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2024–08 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–MRX–2024–08. 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–MRX–2024–08 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06321 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99792; File No. SR–NASDAQ–2024–014]

Self-Regulatory Organizations; The Nasdaq Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Trade Now Order Attribute, at Equity 4, Rules 4702 and 4703

March 20, 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 18, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Trade Now Order Attribute, at Equity 4, Rule 4703,[3] as well as to make conforming changes to Rule 4702, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4703(m), which governs the Trade Now Order Attribute.[4] Under the Exchange's rules, as amended by SR–NASDAQ–2022–051,[5] Trade Now is an Attribute that allows a resting Order ''that becomes locked or crossed, as applicable, at its non-displayed price by the posted price of an incoming Displayed Order or a Midpoint Peg Post-Only Order to execute against the locking or crossing Order(s) as a liquidity taker automatically.'' The Exchange proposes to amend this rule text to state instead that Trade Now allows ''a resting Order that is locked or crossed, as applicable, at its non-displayed price by the posted price of

[3] References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[5] *See* Securities Exchange Act Release No. 34–95768 (September 14, 2022); 87 FR 57534 (September 20, 2022) (SR–Nasdaq–2022–051).

an incoming Displayed Order or a Midpoint Peg Post-Only Order or another Order or Orders (where such locking or crossing Order(s) or the order with Trade Now satisfies a Minimum Quantity condition) to execute as a liquidity taker automatically, when such Orders become marketable.'' These proposed amendments serve several purposes.

First, the proposed amended text broadens the scope of the Rule so that it provides for Trade Now to also activate in circumstances where Orders possessing the Trade Now Order Attribute cannot execute at the point of initial interaction due to a Minimum Quantity condition [6] on the resting Order. The existing rule text suggests that Trade Now will activate only where it can do so immediately upon interaction with an incoming Displayed Order or a Midpoint Peg Post-Only Order, rather than after waiting for any conditions that preclude immediate execution from occurring. Under the proposed amendment, Trade Now would activate and execute against the locking or crossing Orders when the Minimum Quantity condition that prevented the immediate execution is satisfied, provided that the other requirements for activation of Trade Now functionality remain satisfied at that time.[7]

This proposed amendment enables Trade Now to better achieve its underlying purpose—which is to help clear the Exchange Book of locking or crossing orders. The Exchange perceives no logical basis to preclude activation of Trade Now when two (or more) Orders meet the conditions for activation, but for the fact that one of them has a Minimum Quantity condition that precluded it from executing (immediately upon entry and/or against subsequent incoming contra-side orders). Provided that the conditions for Trade Now to activate remain satisfied as of the time when the Orders become marketable, the Exchange believes that it is logical and consistent with the purpose of Trade Now for these Orders to execute such locking or crossing orders when the Minimum Quantity condition can be satisfied because doing so will help clear the Order Book of locked and crossed orders.

An example of a scenario in which the proposed amendment would apply is when an Order with Trade Now has a Minimum Quantity condition that a locking or crossing Order cannot initially satisfy. By way of illustration, assume that Participant A enters Order 1, which is a Displayed Order to sell 100 shares of XYZ at $10.00. Participant B then enters Order 2, which is a Non-Displayed Trade Now order to buy 200 shares of XYZ at $10.00, with a Minimum Quantity requirement of 200 shares. Order 2 will not automatically remove Order 1 due to the Minimum Quantity requirement. Participant C thereafter enters Order 3, which is a Non-Displayed Order to sell 100 shares of XYZ at $10.00. Under the existing Rule, Order 2 would not remove Order 3 using Trade Now due to the Minimum Quantity requirement of Order 2. Under the proposed amended Rule text, however, Trade Now would be activated for Order 2, and it would remove both Orders 1 and 3.

Similarly, the amendment would apply when it is an incoming locking Order, or a resting locking Order, that has a Minimum Quantity condition which the Order with Trade Now cannot satisfy immediately. In this scenario, assume that Participant A enters Order 1, which is a Non-Displayed Order to sell 300 shares of XYZ at $10.00, with a Minimum Quantity requirement of 200 shares. Participant B then enters Order 2, which is a Non-Displayed Order with Trade Now to buy 100 shares of XYZ at $10.00. Under the existing Rule, Order 2 will lock Order 1 but not execute due to the Minimum Quantity requirement associated with Order 1. If Participant C thereafter enters Order 3, which is another Displayed Order to buy 200 shares of XYZ at $10.00, then under the existing Rule, Order 3 will execute against Order 1 upon receipt, but Order 2 will not use Trade Now to trade against the remaining shares of Order 1. Under the proposal, however, once Order 3 is entered, it will execute against Order 1, satisfying the Minimum Quantity requirement of Order 1 and reducing the remaining size of Order 1 to 100 shares. At this point, Order 2 is capable of executing against the reduced size of Order 1. Order 2 will activate Trade Now, execute against Order 1, and clear the locked book.

In addition to the above, the proposed amendments to Rule 4703(m), along with corresponding amendments to Rule 4702(b)(4) and (5), would discontinue the applicability of Trade Now to Midpoint Peg Post-Only Orders and Post-Only Orders.[8] The Exchange proposes to eliminate the applicability of Trade Now to these two Order Types because Trade Now is incompatible with the designs of these Order Types. In other words, Midpoint Peg Post-Only Orders and Post-Only Orders are liquidity-adding Order Types, whereas Orders with Trade Now are designed to be liquidity taking Orders. Because of this incompatibility, the Exchange finds that market participants rarely, as a practical matter, select Trade Now for their Midpoint Peg Post-Only Orders or their Post Only Orders. Insofar as Trade Now serves no apparent utility as an Attribute of these Order Types, the Exchange proposes to eliminate its applicability thereto.[9]

Lastly, the Exchange proposes to modify existing language in the Rule which states that only an incoming Displayed Order whose displayed price locks or crosses a resting Order with Trade Now at its non-displayed price, or an incoming Midpoint Peg Post-Only Order, will trigger the Trade Now functionality. The proposed Rule amendment broadens this text to also provide for another Order (including a Displayed or a Non-Displayed Order) whose price locks or crosses a resting Order with Trade Now to trigger Trade Now where the resting Order with Trade Now has a Minimum Quantity

[6] Pursuant to Rule 4703(e), ''Minimum Quantity'' is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. The Rule provides for two types of Minimum Quantity Attributes: one in which a participant specifies that the condition may be satisfied by execution against one or more orders with an aggregate size of at least the minimum quantity; and another in which the condition must be satisfied by execution against one or more Orders, each of which must have a size of at least the minimum quantity. *Id.* This proposed rule change concerns the first of these two alternatives.

[7] The Proposal also replaces the word ''becomes'' with ''is'' in the existing phrase ''resting Order that becomes locked or crossed, as applicable, at its non-displayed price'' to accommodate the fact that, with the proposed amendment, Trade Now could activate after an Order with Trade Now becomes locked if it is not marketable at that initial point in time.

[8] The existing rule text of Rule 4703(m) expressly applies Trade Now to Midpoint Peg Post-Only Orders, and implicitly applies Trade Now to Post-Only Orders by virtue of Trade Now's applicability to Displayed Orders (Post-Only Orders are Displayed).

[9] Another proposed conforming change would amend Rule 4702(b)(15), which governs Midpoint Extended Life Orders Plus Continuous Book (''M–ELO+CB''), to address the fact that Trade Now would no longer be available as an Attribute of Midpoint Peg Post Only Orders, which in turn are one of the Order Types with which M–ELO+CB may interact. The existing Rule text states that ''Non-Displayed Midpoint Pegging and Midpoint Peg Post-Only Orders (collectively, ''Midpoint Orders'') resting on the Exchange's Continuous Book'' are eligible to execute against M–ELO+CB if, among other things, ''the Midpoint Order has the Midpoint Trade Now Attribute enabled.'' The Exchange proposes to amend this language to delete reference to Midpoint Peg Post Only Orders, such that the pertinent text will refer instead only to Midpoint Pegging Orders having such eligibility. Moreover, the Exchange proposes to correct an erroneous reference to ''Midpoint'' Trade Now, which is a functionality that the Exchange previously folded into Trade Now in a prior rule filing. *See* Securities Exchange Act Release No. 34–92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR–NASDAQ–2021–044).

condition that the incoming Order (either itself, or in aggregate with other resting Orders) satisfies. The purpose of this new language is to account for the fact that a non-Displayed incoming Order, in addition to a Displayed incoming Order, can lock or cross a resting Order with Trade Now if it satisfies the Minimum Quantity condition of the resting Trade Now Order. The proposed amended Rule text also accounts for scenarios in which the Order with Trade Now does not possess a Minimum Quantity condition, but instead, the incoming locking/crossing Order or another resting locking/crossing Order possesses the Minimum Quantity Attribute, and the Minimum Quantity condition is reduced such that the Order with Trade Now becomes able to satisfy the condition. The proposed amendments would provide for Trade Now to activate in these scenarios as well.

The Exchange will publish an Equity Trader Alert at least seven days prior to implementing the proposed amendments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, 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.

Specifically, the Exchange believes that it is consistent with the Act to amend the Exchange's Trade Now Rule to allow for Trade Now to activate, not only immediately upon receipt of a locking or crossing contra Displayed or Midpoint Peg Post-Only Order, but also at such time when the Order with Trade Now become marketable, if it was not marketable initially due to a Minimum Quantity Condition. The Exchange believes that the proposed behavior is consistent with the underlying intent of Trade Now, which is to help to clear the Exchange's Order Book of locking and crossing Orders. The Exchange perceives no logical basis to preclude activation of Trade Now when two Orders meet the conditions for activation, but for the fact that one of them is not marketable, and thus cannot interact with the other one immediately upon entry. Provided that the conditions for Trade Now to activate remain satisfied as of the time when the Orders become marketable, the Exchange believes that these Orders should execute automatically at that time. Moreover, the Exchange believes that the proposed behavior is consistent with the expectations of market participants for Trade Now functionality.

In addition to the above, it is also consistent with the Act to amend Rule 4703(m), along with Rule 4702(b)(4) and (5), to discontinue the applicability of Trade Now to Midpoint Peg Post-Only Orders and Post-Only Orders. As noted above, the Exchange proposes to eliminate the applicability of Trade Now to these two Order Types because Trade Now, which classifies an Order as a liquidity taker, is incompatible with the designs of these Order Types as liquidity maker Orders. Insofar as Trade Now serves no apparent utility as an Attribute of these Order Types, it is reasonable and in the interests of the markets and investors to eliminate its applicability thereto.

Lastly, the Exchange believes it is consistent with the Act to modify existing language in the Rule which states that only an incoming Displayed Order whose displayed price locks or crosses a resting Order with Trade Now at its non-displayed price, or an incoming Midpoint Peg Post-Only Order, will trigger the Trade Now functionality. As stated above, the proposed Rule amendment broadens this text to also provide for another Order (including a Displayed or a Non-Displayed Order) whose price locks or crosses a resting Order with Trade Now to trigger Trade Now where the resting Order with Trade Now has a Minimum Quantity condition that the incoming Order satisfies. This new language would account for the fact that a non-Displayed incoming Order, in addition to a Displayed incoming Order, can lock or cross a resting Order with Trade Now if it satisfies the Minimum Quantity condition. The proposed amended Rule text also accounts for scenarios in which the Order with Trade Now does not possess a Minimum Quantity condition, but instead, the incoming locking/crossing Order or another resting locking/crossing Order possesses the Minimum Quantity Attribute, and the Minimum Quantity condition is reduced such that the Order with Trade Now becomes able to satisfy the condition. The proposed amendments would provide for Trade Now to activate in these scenarios as well. Again, no purpose is served by excluding these scenarios from triggering Trade Now. To the contrary, including them would further the purpose of Trade Now, which is to aid in the clearing the Exchange's Order Book of locked and crossing Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Although the proposal will broaden the applicability of Trade Now, the Exchange neither intends nor perceives that this rule change will have any significant impact on competition other than to make the Exchange's Trade Now Attribute more useful for participants, and thus the Exchange a more attractive venue in which to trade. Even as amended, Trade Now will remain an optional functionality that the Exchange offers at no charge, and which may be used equally by similarly-situated participants.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 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 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.

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–NASDAQ–2024–014 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–NASDAQ–2024–014. 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–NASDAQ–2024–014, and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06328 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99805; File No. SR–FICC–2024–006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

March 20, 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'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change consists of amendments to the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies'').[3]

The proposed rule change would amend the Framework to (1) describe how the Clearing Agencies may solicit the views of their participants and other industry stakeholders, for example, in developing new services or risk management practices, and in evaluating existing products or risk management practices; (2) provide for the annual assessment and subsequent review of FICC's Government Securities Division (''GSD'') access models by FICC's Board of Directors (''FICC Board''), in compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act; and (3) make other conforming and clean up changes to the Framework, as described below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agency Risk Management Framework provides an outline for, among other things, how each of the Clearing Agencies comprehensively manages the risks, including the legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by it and, in this way, supports the Clearing Agencies' compliance with certain requirements of Rule 17Ad–22(e) under the Act, as described in the Framework Filings.[5]

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[14] 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 Nos. 81635 (Sep. 15, 2017), 82 FR 44224 (Sep. 21, 2017) (SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing''), Securities Exchange Act Release No. 89271 (July 9, 2020), 85 FR 42933 (July 15, 2020) (SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 9, 2020), 85–42954 (July 15, 2020) (SR–DTC–2020–009); Securities Exchange Act Release No. 89270 (July 9, 2020), 85–42927 (July 15, 2020) (SR–FICC–2020–007); Securities Exchange Act Release No. 96799 (Feb. 03, 2023), 88 FR 8506 (Feb. 9, 2023) (SR–DTC–2023–001); Securities Exchange Act Release No. 96800 (Feb. 3, 2023), 88–8491 (Feb. 9, 2023) (SR–FICC–2023–001); Securities Exchange Act Release No. 96801 (Feb. 3, 2023), 88–8502 (Feb. 9, 2023) (SR–NSCC–2023–001); Securities Exchange Act Release No. 99097 (Dec. 6, 2023), 88–86186 (Dec. 12, 2023) (SR–FICC–2023–016); Securities Exchange Act Release No. 99098 (Dec. 6, 2023), 88–86183 (Dec. 12, 2023) (SR–NSCC–2023–012); and Securities Exchange Act Release No. 99108 (Dec. 07, 2023), 88 FR 86430 (Dec. 13, 2023) (SR–DTC–2023–012) (together with the Initial Filing, ''Framework Filings'').

[4] 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.

[5] *See* supra note 3. As described in the Framework Filings, the Framework describes how the Clearing Agencies address their respective

The Clearing Agencies routinely solicit their participants' and other industry stakeholders' views when developing new products, services or risk management practices, and when evaluating existing products, services or risk management practices in order to continue to meet the industry's needs, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. Solicitation of industry views may be undertaken in a number of ways, including targeted outreach to firms expected to be impacted by a proposal to broader engagement with a stakeholder council that is assembled to consider issues relevant to a proposal.

Furthermore, the Commission recently adopted amendments to Rule 17Ad–22(e)(18)(iv)(C) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities. Rule 17Ad–22(e)(18)(iv)(C) requires that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[6] In connection with this requirement, FICC would conduct an annual assessment of its access models, which would include the solicitation of participant and other stakeholder views, prior to the FICC Board's review of those models. The proposed rule changes to the Framework would describe the scope of this annual assessment of GSD's access models and the FICC Board's subsequent review. These proposed changes would facilitate FICC's compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[7]

Therefore, the proposed changes would amend the Framework to (i) describe the Clearing Agencies' solicitation of participant and stakeholder views in connection with their development and evaluation of products, services and risk management practices; (ii) describe the annual assessment of GSD's access models, which would include solicitation of participant and stakeholder views, and the subsequent annual review of those models by FICC's Board; and (iii) make other conforming and clean-up changes to the Framework, as discussed in further detail below.

i. Solicitation of Participant and Stakeholder Views

Currently, Section 3 of the Framework outlines the Clearing Agencies' risk management strategies for managing Key Clearing Agency Risks in compliance with Rule 17Ad–22(e)(3).[8] As noted above, the Clearing Agencies may, and regularly do, solicit the views of their participants and other industry stakeholders when, for example, developing new products, services or risk management measures, or when evaluating or making enhancements to existing products, services or risk management measures. This engagement can take many forms, including, for example, targeted outreach to firms that may be impacted by the matter being evaluated, wider solicitation of views through industry surveys, or through the engagement of a standing stakeholder council that has been established to advise on the matters related to the proposal.

The Clearing Agencies' consideration of these views supports its management of risks by ensuring that its activities continue to meet the needs of the industry its serves, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. For example, participants and other stakeholders could identify any unintended impacts a proposal may have on their business models or practices and provide the Clearing Agencies with recommendations on how to meet the goal of a proposal through alternative approaches.

Therefore, the proposed changes would add Section 3.4 to the Framework to describe how the Clearing Agencies may solicit the views of participants and stakeholders. A subsection 3.4.1 would describe how such solicitation may occur generally, including, for example, through targeted outreach to specific participants impacted by a proposal, more widely distributed surveys, and ad hoc forums, as well as through the establishment of standing advisory councils made up of representatives of the participants and other stakeholders. This subsection would also identify the stakeholders that may participate in such councils, including, for example, representatives from transfer agents, liquidity providers, market infrastructures, institutional and retail investors, customers of the Clearing Agencies' participants, securities issuers, and securities holders. The proposed changes would provide general description of how the Clearing Agencies may solicit the views of participants and other industry stakeholders, but would not create an obligation for the Clearing Agencies to conduct such outreach in any particular circumstances.

ii. Annual Assessment and FICC Board Review of GSD's Access Models

Additionally, the proposed Section 3.4, in a subsection 3.4.2, would describe more specifically that an advisory council would assist in an annual review of GSD's access models. This assessment of GSD's access models would be required to be conducted annually by FICC and would precede an annual review of GSD's access models by the FICC Board, as required by Rule 17Ad–22(e)(18)(iv)(C).[9]

The annual review of GSD's access models would be designed to determine whether FICC continues to provide appropriate and flexible means to facilitate access to clearance and settlement of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, consistent with FICC's responsibility to provide sound risk management and comply with its applicable regulatory requirements. The proposed Section 3.4 of the Framework would further provide that the annual review would include the following, in furtherance of its goal: (1) document any instance in which FICC treats transactions differently and confirm that any variation in treatment is both necessary and appropriate; (2) consider whether to enable GSD's Netting Members to submit to eligible transactions for clearance and settlement that have been executed by two indirect participants of FICC/GSD (''done-away''); (3) consider the volumes and proportion of the markets that are being centrally cleared through different access models; and (4) consider whether it is appropriate to develop and propose an additional category or categories of Netting Members to the GSD Rules to reflect the types of legal entities that applied to be a Netting Member over the prior 12 months and did not fit into one

compliance with the requirements of Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23). 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

[6] *Supra* note 4.

[7] *Id.* Contemporaneous with this filing, FICC will file separate proposed rule changes to address other requirements applicable to it and adopted as part of the Treasury Clearing Rules.

[8] ''Key Clearing Agency Risks'' are defined in Section 3 of the Framework and include, ''legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by the Clearing Agencies.'' *Supra* note 3.

[9] *Supra* note 4. Contemporaneous with this filing, FICC will file a separate proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C).

of the existing Netting Member categories.

Engaging participants, their customers and other stakeholders in this annual review would facilitate FICC's ability to meet these goals. Participants and other stakeholders could, for example, assist in identifying ways the GSD access models may treat their, or their customers' transactions differently and in assessing whether such variation in treatment is both necessary and appropriate. A stakeholder council, which would include representatives of participants, their customers and as well as other industry stakeholders, could also provide FICC with information regarding their business models and how they, and their customers, use GSD's clearing services. Through this outreach, FICC could better understand the volumes and proportions of the markets that are being centrally cleared through different access models. Participant and stakeholder views obtained in the review of GSD's access models would be included in the annual review of those models by the FICC Board and, therefore, support FICC's compliance with Rule 17Ad–22(e)(18)(iv)(C) under the Act.[10]

As noted above, FICC is separately filing a proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C), including changes that would provide a framework for FICC to consider an applicant, including a legal entity that is organized or established under the laws of a country other than the United States, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories. In connection with its annual review of the GSD access models, the proposed changes to the Framework would also require that FICC 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.

iii. Other Conforming and Clean Up Changes

The Clearing Agencies would also make conforming and other clean up changes to the Framework. These changes would include changes to the Executive Summary of the Framework in Section 1 to (1) include the annual review of GSD's access models, pursuant to Rule 17Ad–22(e)(18)(iv)(C) under the Act,[11] in the list of regulatory requirements that are addressed in the Framework; and (2) update the description of the contents of Section 3 of the Framework to include the solicitation of participant and stakeholder views and annual review of GSD's access models as part of the Clearing Agencies' management of risks.

The proposed changes would also remove the defined term ''Management Committee'' wherever referenced and replace it with ''senior management committee.'' The same internal management committee would maintain the responsibilities of the current Management Committee, as described in the Framework, but the proposed changes to remove the capitalized reference to this committee would allow the Framework to continue to be accurate notwithstanding any future changes to the name of this committee.

Other grammatical clean up changes would also be made to the Framework.

Implementation Timeframe

Subject to approval by the Commission, the Clearing Agencies expect 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 the Clearing Agencies' website.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad–22(e)(18)(iv)(C) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[14] The proposed changes would describe how the Clearing Agencies' solicit the views of their participants and stakeholders in developing new, and evaluating existing, products, services and risk management practices. As described above, by soliciting these views, the Clearing Agencies would be able to identify, for example, any unintended consequences a proposal may have on its participants and obtain recommendations on how to meet its goals through alternative approaches. In this way, by managing the risk that a proposal could have an unintended consequences on participants, the proposed changes to describe the solicitation of participant and stakeholder views by the Clearing Agencies in developing proposals would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[15]

The proposed changes to make conforming and clean up changes to the Framework would ensure that the Framework is clear and accurate in describing the risk management functions of the Clearing Agencies. The risk management functions described in the Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. By improving the clarity and accuracy of the descriptions of risk management functions within the Framework, the proposed changes would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[17] The proposed changes to the Framework would describe how GSD's access models would be assessed annually, including through the solicitation of feedback on such access models by a stakeholder council. The proposed changes would also describe the goals of the assessment and how those goals would be met. Finally, the proposed changes would provide that the assessment of GSD's access models be conducted prior to, and in support of, the annual review of those models by the FICC Board, as required by Rule

[10] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[11] *Id.*

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[14] *Supra* note 12.

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

17Ad–22(e)(18)(iv)(C).[18] Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[19]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework to describe the solicitation of participant and stakeholder views, and the annual review of the GSD's access models, would have any impact on competition. The proposed changes would describe an existing process by which the Clearing Agencies engage with their participants and other stakeholders regularly in connection with their evaluation of proposals and their assessment of existing practices. The proposed change would also describe how it would use various methods for soliciting feedback from different groups, which will facilitate its ability to solicit a wide range of views from different types of firms. Further, as described above, the goal of the annual assessment and review of GSD's access models is to ensure FICC offers appropriate means to facilitate access to GSD's clearing services, including those of indirect participants. By contributing to the development of access models that are designed to facilitate access to GSD's clearing services by a wider variety of market participants, the annual assessment and review of GSD's access models in the Framework would promote competition in the markets where GSD operates.

The Clearing Agencies do not believe the proposed rule changes to make conforming and clean up changes to the Framework would impact competition. These changes would ensure the clarity and accuracy of the descriptions of risk management functions in the Framework. They would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposal to make conforming and clean up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have 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.

[18] *Id.*

[19] *Id.*

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 Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–FICC–2024–006 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–2024–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 FICC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–2024–006 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06340 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–669, OMB Control No. 3235–0749]

Proposed Collection; Comment Request; Extension: Rule 18a–7

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

[20] 17 CFR 200.30–3(a)(12).

(''Commission'') is soliciting comments on the existing collection of information provided for in Rule 18a–7 (17 CFR 240.18a–7), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 18a–7 establishes reporting requirements applicable to stand-alone security-based swap dealers (''SBSDs''), stand-alone major security-based swap participants (''MSBSPs''), bank SBSDs, and bank MSBSPs. Rule 18a–7 is modeled on Exchange Act Rule 17a–5, which applies to broker-dealers, but Rule 18a–7 does not include a parallel requirement for every requirement in Rule 17a–5 because some of the requirements in Rule 17a–5 relate to activities that are not expected or permitted of SBSDs and MSBSPs.

Under Rule 18a–7, stand-alone SBSDs and stand-alone MSBSPs are required to file the FOCUS Report Part II and the annual reports, while bank SBSDs and bank MSBSPs are required to file the FOCUS Report Part IIC. Stand-alone SBSDs and stand-alone MSBSPs are required to file the FOCUS Report Part II on a monthly basis, whereas bank SBSDs and bank MSBSPs are required to file FOCUS Report Part IIC on a quarterly basis. Moreover, under Rule 18a–7 stand-alone SBSDs and stand-alone MSBSPs are required to make available to customers an audited statement of financial condition with appropriate notes on their public website.

The Commission estimates that the total hour burden under Rule 18a–7 is approximately 2,796 hours per year, and the total cost burden is approximately $2,424,016 per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted by May 28, 2024.

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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 21, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06371 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99807; File No. SR–NYSEAMER–2024–18]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Connectivity Fee Schedule

March 20, 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 8, 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users [4] with wireless connectivity to MEMX LLC (''MEMX'') market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the ''Existing Third Party Data''),[5] and wired connections to more than 45 market data feeds or combinations of feeds.[6] The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed [7] (''MEMX Data'' and, together with the Existing Third Party Data, the ''Third Party Data''). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (''MDC'').[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–15, SR–NYSEARCA–2024–26, SR–NYSECHX–2024–11, and SR–NYSENAT–2024–09.

[5] *See* Securities Exchange Act Release Nos. 76748 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85); 78376 (July 21, 2016), 81 FR 49311 (July 27, 2016) (SR–NYSEMKT–2016–17); and 80117 (February 28, 2017), 82 FR 12646 (March 6, 2017) (SR–NYSEMKT–2017–09).

[6] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

[7] MEMX Data would also include the test feed for MEMX Memoir market data.

[8] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange's proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, ''[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.'' [9]

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (''Single Port Third Party Data''), it would not receive an additional port for the MEMX Data, as one would not be needed.[10] Rather, the User would be able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any colocation service, including connectivity to Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. 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.'' [11]

The Exchange understands that the third party Quincy Data LLC (''Quincy'') [12] already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange's proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [16] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [17] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party

agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

[9] Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

[10] Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* 82 FR 12646, *supra* note 5, at note 8, and Securities Exchange Act Release No. 98963 (November 16, 2023), 88 FR 81499 (November 22, 2023) (SR–NYSEAMER–2023–59).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.[18] Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[19] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.[20]

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the ''Patch Panel Point'') is normalized.[21] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms (''Telecoms'').[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single

[18] Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

[19] *See* 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

[20] The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

[21] *See* NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space)) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

[22] *See id.*

[23] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[24] *See* Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR–NYSEAMER–2023–36) (''MMR Notice'').

[25] *See id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[26] *See* Wireless Approval Order, *supra* note 16.

Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[27]

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.[28] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[29] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel

[27] 15 U.S.C. 78f(b)(8).

[28] *See supra* note 21.

[29] *See id.*

Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[30] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [31] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[32] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

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 [33] and Rule 19b–4(f)(6) thereunder.[34] 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.[35]

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) [36] 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–2024–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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–2024–18 and should be submitted on or before April 16, 2024.

[30] *See supra* note 23.

[31] *See* MMR Notice, *supra* note 24.

[32] *See supra* note 25.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[36] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06342 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99811; File No. SR–CboeEDGX–2024–009]

Self-Regulatory Organizations; Cboe EDGX 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 20, 2024.

On January 25, 2024, Cboe EDGX Exchange, Inc. (''EDGX'' 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–CboeEDGX–2024–009).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06346 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99804; File No. SR–NYSECHX–2024–12]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.

March 20, 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 11, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') to increase existing credits applicable to certain Exchange members. The Exchange proposes to implement the fee changes effective March 11, 2024. 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 the Fee Schedule to increase existing credits applicable to certain Exchange members. Specifically, the Exchange proposes to amend Section F.2 of the Fee Schedule to increase the Transaction Fee Credit and the Clearing Submission Fee Credit applicable to Clearing Brokers. The Exchange proposes to implement the fee changes effective March 11, 2024.[4]

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation National Market System (''NMS''), the Commission highlighted the importance of market forces in determining prices and Self-Regulatory Organizations (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for

[37] 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. 99490 (Feb. 7, 2024), 89 FR 10129.

[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] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Price List on March 1, 2024 (SR–NYSECHX–2024–09). SR–NYSECHX–2024–09 was withdrawn on March 11, 2024 and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Section F.2 of the Fee Schedule currently provides for a Transaction Fee Credit and a Clearing Submission Fee Credit and generally states that the total monthly fees owed by an Exchange-registered Institutional Broker [11] to the Exchange will be reduced (and Institutional Brokers will be paid for any unused credits) by the application of a Transaction Fee Credit and a Clearing Submission Fee Credit. Specifically, a Clearing Broker [12] currently receives a ''Transaction Fee Credit'' equal to 8% of the transaction fees received by the Exchange each month for agency trades executed through the Institutional Broker (*i.e.,* Section E.3(a) fees) for the portion(s) of the transaction handled by the Clearing Broker. Similarly, a Clearing Broker currently receives a ''Clearing Submission Fee Credit'' equal to 8% of the Clearing Submission Fees received by the Exchange pursuant to Section E.7 of the Fee Schedule for the portion(s) of the transaction handled by the Clearing Broker. Also, only Institutional Brokers that are members of the Financial Industry Regulatory Authority, Inc. are eligible for the Clearing Submission Fee Credit. The Transaction Fee Credit and the Clearing Submission Fee Credit are both provided by the Exchange to the Clearing Broker, who then passes on these credits to the Institutional Broker associated with the transaction.

The Exchange proposes to amend Section F.2 of the Fee Schedule by increasing both the Transaction Fee Credit and the Clearing Submission Fee Credit from 8% to 10%. The Exchange believes that increasing the Transaction Fee Credit and the Clearing Submission Fee Credit, which would result in reduced fees, would increase trading and post-trade activity on the Exchange.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

The Exchange believes that increasing the Transaction Fee Credit, which applies to executions effected on the Exchange, and the Clearing Submission Fee Credit, which applies to off-exchange executions cleared on the Exchange, from 8% to 10%, is reasonable because these credits are designed to incent trading, in the case of the Transaction Fee Credit, and clearing activity, in the case of the Clearing Submission Fee Credit, by Institutional Brokers. The Exchange believes increasing these credits, which would result in lower fees, is a reasonable means to further incentivize Institutional Brokers to conduct more of their trading and clearing activity on the Exchange.

The Exchange believes that the proposal represents a reasonable effort to promote enhanced order execution opportunities as well as promote post-trade clearing submissions by Exchange members. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to attract additional order flow and increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit equitably allocates its fees and credits among its market participants. The Exchange believes it is equitable to provide Clearing Brokers with increased credits, which would

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[8] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] The term ''Institutional Broker'' is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange.; *see also generally* NYSE Chicago Article 17.

[12] Section F.2 of the Fee Schedule defines ''Clearing Broker'' as the Exchange-registered Institutional Broker that did not execute the trade, but acted as the broker for the ultimate Exchange Clearing Participant. ''Clearing Participant'' means a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency. *See* Article 1, Rule 1(ee).

[13] The Exchange previously amended the Fee Schedule to increase the Transaction Fee Credit and the Clearing Submission Fee Credit, from 5% to 8%. *See* Securities Exchange Act Release No. 96461 (December 7, 2022), 87 FR 76225 (December 13, 2022) (SR–NYSECHX–2022–28).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

result in lower fees, because the credits would serve to incentivize members to conduct more of their trading and clearing activity on the Exchange.

The Exchange also believes that the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit would encourage Institutional Brokers to conduct more of their trading and post-trade activity on the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that increasing the level of the Transaction Fee Credit and the Clearing Submission Fee Credit is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit would be applied to all Clearing Brokers on an equal basis. Accordingly, no Exchange member already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits under the proposal. The Exchange further believes that the proposed fee change would not permit unfair discrimination among Clearing Brokers because the credits would be available equally to similarly situated Clearing Brokers. As described above, in today's competitive marketplace, market participants have a choice of where to direct their order flow or which market to transact on. The Exchange believes this proposal would benefit a number of members by lowering their current fees, regardless of whether or not they increase their trading and clearing activity on the Exchange.

In the prevailing competitive environment, Exchange members are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, no Exchange member already operating on the Exchange would be disadvantaged by the proposed allocation of the Exchange's fees and credits.

Finally, the submission of orders to the Exchange is optional for Exchange members in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants on the Exchange. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [18]

Intramarket Competition. The Exchange believes the proposed increase to the Transaction Fee Credit and the Clearing Submission Fee Credit would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange. The proposed change is designed to attract additional trading and post-trade activity to the Exchange. The Exchange believes that increasing the level of the Transaction Fee Credit and the Clearing Submission Fee Credit would incentivize market participants to direct more of their trading and post-trading activity to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality. Additionally, the proposed changes would apply equally to all similarly situated Clearing Brokers, in that they would all be equally eligible for the credits available under Sections F.2 of the Fee Schedule.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSECHX–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–NYSECHX–2024–12. This file number should be included on the

[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[19] 15 U.S.C. 78s(b)(3)(A).

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–NYSECHX–2024–12 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06339 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99812; File No. SR–EMERALD–2024–11]

Self-Regulatory Organizations; MIAX Emerald LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule for Purge Ports

March 20, 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 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 proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the ''Fee Schedule'') to amend fees for Purge Ports.[3]

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 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 fees for Purge Ports, which is a function enabling Market Makers[4] to cancel all open quotes or a subset of open quotes through a single cancel message. The Exchange currently provides Market Makers the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send purge messages to the Exchange System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange initially filed the proposal on September 29, 2023 (the ''Initial Proposal'').[6] On November 22, 2023, the Exchange withdrew the Initial Proposal and replaced with a revised filing (the ''Second Proposal'').[7] On January 17, 2024, the Exchange withdrew the Second Proposal and, on January 31, 2024, replaced it with a further revised filing (the ''Third Proposal'').[8] On March 8, 2024, the Exchange withdrew the Third Proposal and replaced it with this further revised filing (the ''Fourth Proposal'').

The Exchange is including a cost analysis in this filing to justify the proposed fees. As described more fully below, the cost analysis includes, among other things, descriptions of how the Exchange allocated costs among it and its affiliated exchanges for similar proposed fee changes (separately between MIAX Pearl Options[9] and MIAX,[10] collectively referred to herein as the ''affiliated markets''), to ensure no cost was allocated more than once, as well as 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 similar proposals submitted by the affiliated markets. The proposed fees are intended to cover the Exchange's cost of providing Purge Ports with a reasonable mark-up over those costs.

Purge Port Fee Change

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,[11] the Exchange assesses a flat fee

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 98734 (October 12, 2023), 88 FR 71894 (October 18, 2023) (SR–EMERALD–2023–26).

[7] *See* Securities Exchange Act Release No. 99089 (December 5, 2023), 88 FR 85941 (December 11, 2023) (SR–EMERALD–2023–29).

[8] *See* Securities Exchange Act Release No. 99529 (February 13, 2024), 89 FR 12907 (February 20, 2024) (SR–EMERALD–2024–05).

[9] MIAX Pearl Options is the options market of MIAX PEARL, LLC (''MIAX Pearl''), which also operates an equities trading facility called MIAX Pearl Equities. *See* Exchange Rule 100 and MIAX Pearl Rule 1901.

[10] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[11] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). *See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. *See also* Securities

of $1,500 per month, regardless of the number of Purge Ports utilized by a Market Maker. Prior to the Initial Proposal, a Market Maker could request and be allocated two (2) Purge Ports per Matching Engine [12] to which it connects and not all Market Makers connected to all of the Exchange's Matching Engines.

The Exchange now proposes to amend the fee for Purge Ports to align more closely with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of $600 per month per Matching Engine. The only difference with a per port structure is that Market Makers receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than being charged a separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its System architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee is lower than the comparable fee charged by competing exchanges that also charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same lower fee.[13]

Similar to a per port charge, Market Makers are able to select the Matching Engines that they want to connect to,[14] based on the business needs of each Market Maker, and pay the applicable fee based on the number of Matching Engines and ports utilized. The Exchange believes that the proposed fee provides Market Makers with flexibility to control their Purge Port costs based on the number of Matching Engines each Marker Maker elects to connect to based on each Market Maker's business needs.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member [15] the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers [16] in the management of, and risk control over, their quotes, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their quotes, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open quotes, or a subset of open quotes through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of quotes.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel quotes at high rates. Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.[17] Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Market Makers can currently cancel quotes in rapid succession across their existing logical ports [18] or through a single cancel message, all open quotes or a subset of open quotes.

Similarly, Market Makers may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all quotes, as configured or instructed by the Member or Market Maker.[19] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge and enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[20] Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Market Maker's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Market Makers and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fee change is immediately effective

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with Section 6(b)(4) of the Act [23] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[12] A Matching Engine is a part of the Exchange's 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* the Definitions Section of the Fee Schedule.

[13] *See supra* note 11.

[14] The Exchange notes that each Matching Engine corresponds to a specified group of symbols. Certain Market Makers choose to only quote in certain symbols while other Market Makers choose to quote the entire market.

[15] 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.

[16] Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

[17] *See* Exchange Rule 519C(a) and (b).

[18] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancelation rates.

[19] *See* Exchange Rule 519C(c).

[20] *See* Exchange Rule 532.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(4).

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 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,[24] and Rule 19b–4 thereunder,[25] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[26] which requires, among other things, that exchange fees be reasonable and equitably allocated,[27] not designed to permit unfair discrimination,[28] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[29] The Exchange notes 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 Staff Guidance.[30]

As detailed below, the Exchange recently calculated its aggregate annual costs for providing Purge Ports to be $822,969 (or approximately $68,581 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing Purge Ports to its Market Makers going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $600 per Matching Engine for Purge Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[31] 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 and purge 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''). The Exchange recently update its Cost Analysis using its 2024 estimated budget as described below.

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,[32] 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.

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

[24] 15 U.S.C. 78s(b)(1).

[25] 17 CFR 240.19b–4.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] *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'').

[31] 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.

[32] 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.

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 Purge Port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to Purge 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 Purge Port services is $68,581, as further detailed below.

Costs Related to Offering Purge Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Purge Ports 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 2.2% of its overall Human Resources cost to offering Purge Ports).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% of all
Human Resources	$491,123	$40,927	2.2
Connectivity (external fees, cabling, switches, etc.)	868	72	0.9
Internet Services and External Market Data	4,914	410	0.9
Data Center	20,379	1,698	1.3
Hardware and Software Maintenance and Licenses	16,268	1,356	0.9
Depreciation	36,917	3,076	1.0
Allocated Shared Expenses	252,500	21,042	2.9
Total	822,969	68,581	2.1

[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 Purge 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 Purge 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.

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 Purge Ports and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide port and connectivity services). 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 port services. From that portion allocated to the Exchange that applied to ports, the Exchange then allocated a weighted average of 2.6% of each employee's time from the above group to Purge Ports.

The Exchange also allocated Human Resources costs to provide Purge Ports to a limited subset of personnel with ancillary functions related to establishing and maintaining such ports (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 Purge Ports) and then applied a smaller allocation to such employees' time to Purge Ports (1.3%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to Purge Ports, whether it is a sales person selling port services, finance personnel billing for port services or providing budget analysis, or information security ensuring that such ports are 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 Purge Ports, 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 Purge Ports: 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 2.6% of each of their employee's time assigned to the Exchange for Purge Ports, as stated above. Employees from these departments perform numerous functions to support Purge Ports, such as the installation, re-location, configuration, and maintenance of Purge Ports 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 Purge Ports 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 Purge Ports, 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 Purge Ports related Human Resources costs to the extent that they are involved in overseeing tasks related to providing Purge Ports. 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 vendors 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 which includes Purge Ports. 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, including Purge Ports. In addition, the connectivity is necessary for the Exchange to notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Also, like other types of ports offered by the Exchange, Purge Ports leverage the Exchange's existing 10Gb ULL connectivity, which also relies on connectivity to other national securities exchanges and OPRA. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for Purge Ports.

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 Purge 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 OPRA, to receive and consume market data from other markets. The Exchange includes external market data costs towards Purge Ports because such market data is necessary to offer certain services related to such ports, such as checking for market conditions (*e.g.,* halted securities). External market data is also consumed at the Matching Engine level for, among other things, validating quotes on entry against the national best

bid or offer (''NBBO'').[33] Purge Ports are a component of the Matching Engine, and used by market participants to cancel multiple resting quotes within the Matching Engine. While resting, the Exchange uses external market data to manage those quotes, such as preventing trade-throughs, and those quotes are also reported to OPRA for inclusion in this consolidated data stream. The Exchange also must notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Thus, since market data from other exchanges is consumed by the Matching Engine to validate quotes and check market conditions, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports.

For the reasons set forth above, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports since market data from other exchanges is consumed at the Exchange's Purge Port level to validate purge messages and the necessity to cancel a resting quote via a purge message or via some other means.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Purge 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. 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. The Exchange has allocated a percentage of its Data Center cost (1.3%) to Purge Ports because the third-party data centers and the Exchange's physical equipment contained therein are necessary for providing Purge Ports. In other words, for the Exchange to operate in a dedicated physical space with direct connectivity by market participants to its trading platform, the data centers are a critical component to the provision of Purge Ports. If the Exchange did not maintain such a presence, then Purge Ports would be of little 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 Purge Ports for each Matching Engine of the Exchange. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Without hardware and software licenses, Purge Ports would not be able to be offered to market participants because hardware and software are necessary to operate the Exchange's Matching Engines, which are necessary to enable the purging of quotes. The Exchange also routinely works to improve the performance of the hardware and software used to operate the Exchange's network and System. 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 allocate a certain percentage of its hardware and software expense to help offset those costs of providing Purge Port connectivity to its Matching Engines.

Depreciation

The vast majority of the software the Exchange uses to provide 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 Purge 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 1.0% of all depreciation costs to providing Purge Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Purge 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 Purge Ports.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Purge Port costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Purge 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 3% of the overall cost for directors was allocated to providing Purge Ports.

Approximate Cost for Purge Ports per Month

Based on projected 2024 data, the total monthly cost allocated to Purge Ports of $68,581 was divided by the total number of Matching Engines in which Market Makers used Purge Ports for the month of December 2023, which was 132, resulting in an approximate cost of $522 per Matching Engine per month for Purge Port usage (when rounding to the nearest dollar). The Exchange notes that the flat fee of $600 per month per Matching Engine entitles each Market Maker to two Purge Ports per Matching Engine. The majority of Market Makers are connected to all twenty-four of the Exchange's Matching Engines and utilize Purge Ports on each Matching Engine, except one Market Maker, which only utilizes Purge Ports on three Matching Engines.

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 Purge 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. For instance, in calculating the Human Resources expenses to be allocated to Purge Ports 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 higher

[33] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

percentage of the cost of such personnel (19.3%) given their focus on functions necessary to provide Ports. The salaries of those same personnel were allocated only 2.6% to Purge Ports and the remaining 97.4% was allocated to connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing Purge Ports to any other employee group, outside of a smaller allocation of 1.3% for Purge Ports, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Purge Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 2.2% of its personnel costs to providing Purge Ports. In turn, the Exchange allocated the remaining 97.8% of its Human Resources expense to membership services, transaction services, connectivity 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 Purge 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 Purge Port services to its Market Makers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing Purge Port services, but instead allocated approximately 1.0% of the Exchange's overall depreciation and amortization expense to Purge Ports. The Exchange allocated the remaining depreciation and amortization expense (approximately 99%) toward the cost of providing transaction services, membership services, connectivity 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 Purge Ports, the Exchange will have to be successful in retaining existing Market Makers that wish to maintain Purge Ports or in obtaining new Market Makers 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 port 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 [34]

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 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 Purge Port services. Subscribers, particularly those of Purge Ports, 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. 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 (connections and ports), 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 Purge Port services will equal $822,969. Based on current Purge Port services usage, the Exchange would generate annual revenue of approximately $950,400. The Exchange believes this represents a modest profit of 13.4% when compared to the cost of providing Purge Port services, which could decrease over time.[35]

[34] For purposes of calculating projected 2024 revenue for Purge Ports, the Exchange used revenues for the most recently completed full month.

[35] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will

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 Purge Port services versus the total projected revenue of the Exchange associated with network Purge Port services.

The Proposed Fees Are Also Equitable, Reasonable, and Not Unfairly Discriminatory

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional Purge Port services with a flexible fee structure promotes choice, flexibility, and efficiency. The Exchange believes Purge Ports enhance Market Makers' ability to manage quotes, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. The Exchange believes that proper risk management, including the ability to efficiently cancel multiple quotes quickly when necessary is valuable to all firms, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.[36] Specifically, any interest that is executable against a Member's or Market Maker's quotes that is received by the Exchange prior to the time of the removal of quotes request will automatically execute. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.[37]

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality in their trading systems that permit the flexible cancellation of quotes entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

The Exchange also believes that moving to a per Matching Engine fee for Purge Ports is reasonable due to the Exchange's architecture that provides the Exchange the ability to provide two (2) Purge Ports per Matching Engine.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select this service option will be charged the same amount for the same services. All Market Makers have the option to select any port or connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Maker is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower cost, adversely impacting the overall trading on the Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between Market Makers. The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one

decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited January 18, 2024).

[36] *See* Exchange Rule 604. *See also generally* Chapter VI of the Exchange's Rules.

[37] *Id.*

comment letter on the Second Proposal, both from the same commenter.[38] These comment letters were submitted not only on these proposals, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain other ports. The Exchange received one other comment letter on the Second Proposal and another on the Third Proposal from a separate commenter.[39] Overall, the Exchange believes that the issues raised by the first commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, both commenters raised concerns 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. However, the commenters do raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough response to this comment would require the Exchange to obtain competitively sensitive information about other exchanges' architecture and how their members connect. The Exchange is not privy to this information. Further, the commenters compare the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge functionality as proposed herein. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchange's entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

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,[40] and Rule 19b–4(f)(2)[41] 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–2024–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–EMERALD–2024–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2024–11 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

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[38] *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.

[39] *See* letters from John C. Pickford, Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated January 4, 2024 and March 1, 2024.

[40] 15 U.S.C. 78s(b)(3)(A)(ii).

[41] 17 CFR 240.19b–4(f)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99796; File No. SR–NASDAQ–2024–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 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 13, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW × $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than $3,600 and increase as the power density of the cabinet increases. Therefore, Nasdaq's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–NASDAQ–2024–009). The instant filing replaces SR–NASDAQ–2024–009, which was withdrawn on March 13, 2024.

[4] On February 16, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99633 (February 29, 2024), 89 FR 16073 (March 6, 2024) (SR–NASDAQ–2024–007).

[5] *See* Securities Exchange Act Release No. 34–62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. *See* SR–NASDAQ–2024–008 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. *See* SR–NASDAQ–2024–008 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NASDAQ–2024–013 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–NASDAQ–2024–013. 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

[16] There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary*. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–013 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06331 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99803; File No. SR–NSCC–2024–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

March 20, 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, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change consists of amendments to the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC and DTC, the ''Clearing Agencies'').[3]

The proposed rule change would amend the Framework to (1) describe how the Clearing Agencies may solicit the views of their participants and other industry stakeholders, for example, in developing new services or risk management practices, and in evaluating existing products or risk management practices; (2) provide for the annual assessment and subsequent review of FICC's Government Securities Division (''GSD'') access models by FICC's Board of Directors (''FICC Board''), in compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act; and (3) make other conforming and clean up changes to the Framework, as described below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agency Risk Management Framework provides an outline for, among other things, how each of the Clearing Agencies comprehensively manages the risks, including the legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by it and, in this way, supports the Clearing Agencies' compliance with certain requirements of Rule 17Ad–22(e) under the Act, as described in the Framework Filings.[5]

The Clearing Agencies routinely solicit their participants' and other industry stakeholders' views when developing new products, services or risk management practices, and when evaluating existing products, services or risk management practices in order to continue to meet the industry's needs, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. Solicitation of industry views may be undertaken in a number of ways, including targeted outreach to firms expected to be impacted by a proposal to broader engagement with a stakeholder council that is assembled to consider issues relevant to a proposal.

Furthermore, the Commission recently adopted amendments to Rule 17Ad–22(e)(18)(iv)(C) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities. Rule 17Ad–22(e)(18)(iv)(C) requires that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[6] In connection with this requirement, FICC would conduct an annual assessment of its access models, which would include the solicitation of participant and other stakeholder views, prior to the FICC Board's review of those models. The proposed rule changes to the Framework would describe the scope of this annual assessment of GSD's access models and the FICC Board's subsequent review. These proposed changes would facilitate FICC's compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[7]

Therefore, the proposed changes would amend the Framework to (i) describe the Clearing Agencies' solicitation of participant and stakeholder views in connection with their development and evaluation of products, services and risk management

[18] 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 Nos. 81635 (Sep. 15, 2017), 82 FR 44224 (Sep. 21, 2017) (SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing''), Securities Exchange Act Release No. 89271 (July 9, 2020), 85 FR 42933 (July 15, 2020) (SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 9, 2020), 85–42954 (July 15, 2020) (SR–DTC–2020–009); Securities Exchange Act Release No. 89270 (July 9, 2020), 85–42927 (July 15, 2020) (SR–FICC–2020–007); Securities Exchange Act Release No. 96799 (Feb. 03, 2023), 88 FR 8506 (Feb. 9, 2023) (SR–DTC–2023–001); Securities Exchange Act Release No. 96800 (Feb. 3, 2023), 88–8491 (Feb. 9, 2023) (SR–FICC–2023–001); Securities Exchange Act Release No. 96801 (Feb. 3, 2023), 88–8502 (Feb. 9, 2023) (SR–NSCC–2023–001); Securities Exchange Act Release No. 99097 (Dec. 6, 2023), 88–86186 (Dec. 12, 2023) (SR–FICC–2023–016); Securities Exchange Act Release No. 99098 (Dec. 6, 2023), 88–86183 (Dec. 12, 2023) (SR–NSCC–2023–012); and Securities Exchange Act Release No. 99108 (Dec. 07, 2023), 88 FR 86430 (Dec. 13, 2023) (SR–DTC–2023–012) (together with the Initial Filing, ''Framework Filings'').

[4] 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.

[5] *See* supra note 3. As described in the Framework Filings, the Framework describes how the Clearing Agencies address their respective compliance with the requirements of Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23). 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

[6] *Supra* note 4.

[7] *Id.* Contemporaneous with this filing, FICC will file separate proposed rule changes to address other requirements applicable to it and adopted as part of the Treasury Clearing Rules.

practices; (ii) describe the annual assessment of GSD's access models, which would include solicitation of participant and stakeholder views, and the subsequent annual review of those models by FICC's Board; and (iii) make other conforming and clean-up changes to the Framework, as discussed in further detail below.

i. Solicitation of Participant and Stakeholder Views

Currently, Section 3 of the Framework outlines the Clearing Agencies' risk management strategies for managing Key Clearing Agency Risks in compliance with Rule 17Ad–22(e)(3).[8] As noted above, the Clearing Agencies may, and regularly do, solicit the views of their participants and other industry stakeholders when, for example, developing new products, services or risk management measures, or when evaluating or making enhancements to existing products, services or risk management measures. This engagement can take many forms, including, for example, targeted outreach to firms that may be impacted by the matter being evaluated, wider solicitation of views through industry surveys, or through the engagement of a standing stakeholder council that has been established to advise on the matters related to the proposal.

The Clearing Agencies' consideration of these views supports its management of risks by ensuring that its activities continue to meet the needs of the industry its serves, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. For example, participants and other stakeholders could identify any unintended impacts a proposal may have on their business models or practices and provide the Clearing Agencies with recommendations on how to meet the goal of a proposal through alternative approaches.

Therefore, the proposed changes would add Section 3.4 to the Framework to describe how the Clearing Agencies may solicit the views of participants and stakeholders. A subsection 3.4.1 would describe how such solicitation may occur generally, including, for example, through targeted outreach to specific participants impacted by a proposal, more widely distributed surveys, and ad hoc forums, as well as through the establishment of standing advisory councils made up of representatives of the participants and other stakeholders. This subsection would also identify the stakeholders that may participate in such councils, including, for example, representatives from transfer agents, liquidity providers, market infrastructures, institutional and retail investors, customers of the Clearing Agencies' participants, securities issuers, and securities holders. The proposed changes would provide general description of how the Clearing Agencies may solicit the views of participants and other industry stakeholders, but would not create an obligation for the Clearing Agencies to conduct such outreach in any particular circumstances.

ii. Annual Assessment and FICC Board Review of GSD's Access Models

Additionally, the proposed Section 3.4, in a subsection 3.4.2, would describe more specifically that an advisory council would assist in an annual review of GSD's access models. This assessment of GSD's access models would be required to be conducted annually by FICC and would precede an annual review of GSD's access models by the FICC Board, as required by Rule 17Ad–22(e)(18)(iv)(C).[9]

The annual review of GSD's access models would be designed to determine whether FICC continues to provide appropriate and flexible means to facilitate access to clearance and settlement of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, consistent with FICC's responsibility to provide sound risk management and comply with its applicable regulatory requirements. The proposed Section 3.4 of the Framework would further provide that the annual review would include the following, in furtherance of its goal: (1) document any instance in which FICC treats transactions differently and confirm that any variation in treatment is both necessary and appropriate; (2) consider whether to enable GSD's Netting Members to submit to eligible transactions for clearance and settlement that have been executed by two indirect participants of FICC/GSD (''done-away''); (3) consider the volumes and proportion of the markets that are being centrally cleared through different access models; and (4) consider whether it is appropriate to develop and propose an additional category or categories of Netting Members to the GSD Rules to reflect the types of legal entities that applied to be a Netting Member over the prior 12 months and did not fit into one of the existing Netting Member categories.

Engaging participants, their customers and other stakeholders in this annual review would facilitate FICC's ability to meet these goals. Participants and other stakeholders could, for example, assist in identifying ways the GSD access models may treat their, or their customers' transactions differently and in assessing whether such variation in treatment is both necessary and appropriate. A stakeholder council, which would include representatives of participants, their customers and as well as other industry stakeholders, could also provide FICC with information regarding their business models and how they, and their customers, use GSD's clearing services. Through this outreach, FICC could better understand the volumes and proportions of the markets that are being centrally cleared through different access models. Participant and stakeholder views obtained in the review of GSD's access models would be included in the annual review of those models by the FICC Board and, therefore, support FICC's compliance with Rule 17Ad–22(e)(18)(iv)(C) under the Act.[10]

As noted above, FICC is separately filing a proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C), including changes that would provide a framework for FICC to consider an applicant, including a legal entity that is organized or established under the laws of a country other than the United States, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories. In connection with its annual review of the GSD access models, the proposed changes to the Framework would also require that FICC 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.

iii. Other Conforming and Clean Up Changes

The Clearing Agencies would also make conforming and other clean up changes to the Framework. These

[8] ''Key Clearing Agency Risks'' are defined in Section 3 of the Framework and include, ''legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by the Clearing Agencies.'' *Supra* note 3.

[9] *Supra* note 4. Contemporaneous with this filing, FICC will file a separate proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C).

[10] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

changes would include changes to the Executive Summary of the Framework in Section 1 to (1) include the annual review of GSD's access models, pursuant to Rule 17Ad–22(e)(18)(iv)(C) under the Act,[11] in the list of regulatory requirements that are addressed in the Framework; and (2) update the description of the contents of Section 3 of the Framework to include the solicitation of participant and stakeholder views and annual review of GSD's access models as part of the Clearing Agencies' management of risks.

The proposed changes would also remove the defined term ''Management Committee'' wherever referenced and replace it with ''senior management committee.'' The same internal management committee would maintain the responsibilities of the current Management Committee, as described in the Framework, but the proposed changes to remove the capitalized reference to this committee would allow the Framework to continue to be accurate notwithstanding any future changes to the name of this committee.

Other grammatical clean up changes would also be made to the Framework.

Implementation Timeframe

Subject to approval by the Commission, the Clearing Agencies expect 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 the Clearing Agencies' website.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad–22(e)(18)(iv)(C) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[14] The proposed changes would describe how the Clearing Agencies' solicit the views of their participants and stakeholders in developing new, and evaluating existing, products, services and risk management practices. As described above, by soliciting these views, the Clearing Agencies would be able to identify, for example, any unintended consequences a proposal may have on its participants and obtain recommendations on how to meet its goals through alternative approaches. In this way, by managing the risk that a proposal could have an unintended consequences on participants, the proposed changes to describe the solicitation of participant and stakeholder views by the Clearing Agencies in developing proposals would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[15]

The proposed changes to make conforming and clean up changes to the Framework would ensure that the Framework is clear and accurate in describing the risk management functions of the Clearing Agencies. The risk management functions described in the Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. By improving the clarity and accuracy of the descriptions of risk management functions within the Framework, the proposed changes would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[17] The proposed changes to the Framework would describe how GSD's access models would be assessed annually, including through the solicitation of feedback on such access models by a stakeholder council. The proposed changes would also describe the goals of the assessment and how those goals would be met. Finally, the proposed changes would provide that the assessment of GSD's access models be conducted prior to, and in support of, the annual review of those models by the FICC Board, as required by Rule 17Ad–22(e)(18)(iv)(C).[18] Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[19]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework to describe the solicitation of participant and stakeholder views, and the annual review of the GSD's access models, would have any impact on competition. The proposed changes would describe an existing process by which the Clearing Agencies engage with their participants and other stakeholders regularly in connection with their evaluation of proposals and their assessment of existing practices. The proposed change would also describe how it would use various methods for soliciting feedback from different groups, which will facilitate its ability to solicit a wide range of views from different types of firms. Further, as described above, the goal of the annual assessment and review of GSD's access models is to ensure FICC offers appropriate means to facilitate access to GSD's clearing services, including those of indirect participants. By contributing to the development of access models that are designed to facilitate access to GSD's clearing services by a wider variety of market participants, the annual assessment and review of GSD's access models in the Framework would promote competition in the markets where GSD operates.

The Clearing Agencies do not believe the proposed rule changes to make conforming and clean up changes to the Framework would impact competition. These changes would ensure the clarity and accuracy of the descriptions of risk management functions in the Framework. They would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposal to make conforming and clean up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If

[11] *Id.*

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[14] *Supra* note 12.

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[18] *Id.*

[19] *Id.*

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 Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NSCC–2024–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–NSCC–2024–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 NSCC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2024–003 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06338 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99786; File No. SR–MRX–2024–07]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

March 20, 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 7, 2024, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 its Rules at Options 7, Section 6, Ports and Other Services.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–MRX–2023–23) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–MRX–2023–23 and replaced it with SR–MRX–2023–25. On January 16, 2023, the Exchange withdrew SR–MRX–2023–25 and submitted SR–MRX–2024–02. On March 7, 2024, the Exchange withdrew SR–MRX–2024–02 and submitted this filing.

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 Options 7, Section 6, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports [4] and SQF Purge Ports.[5] The Exchange also proposes to remove unnecessary rule text from Options 7, Section 6 related to a technology migration. Both changes are explained below.

Today, MRX assesses $1,250 per port, per month for an SQF Port as well as an SQF Purge Port. Today, MRX waives one SQF Port fee per Market Maker per month. Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of $17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to increase the SQF Port and SQF Purge Port monthly cap fee of $17,500 per month to $27,500 per month.[6] The Exchange is not amending the $1,250 per port, per month SQF Port and SQF Purge Port fees and the Exchange would continue to waive one SQF Port fee per Market Maker per month. As is the case today, the Exchange would not assess a Member an SQF Port or SQF Purge Port fee beyond the monthly cap once the Member has exceeded the monthly cap for the respective month.

Despite increasing the monthly cap for SQF Ports and SQF Purge Ports from $17,500 per month to $27,500 per month, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap.

Pursuant to Supplementary Material .03(c) to Options 3, Section 7, Market Makers may only enter interest into SQF in their assigned options series. Pursuant to Supplementary Material .03(c) to Options 3, Section 7, the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. An MRX Market Maker requires only one SQF Port to submit quotes in its assigned options series into MRX. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. An MRX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[7] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[8]

The Exchange proposes to remove the italicized language in Options 7, Section 6 related to a technology migration that took place in 2022. In 2022, MRX filed a pricing change [9] to permit Members to request certain duplicative ports at no additional cost, from November 1, 2022 through December 30, 2022, to facilitate a technology migration. The rule text related to the 2022 technology migration is no longer necessary because the migration is complete and the pricing is no longer applicable. At this time, the Exchange proposes to remove this rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of 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 members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is reasonable because despite the increase in the monthly cap, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Additionally, an MRX Market Maker requires only one SQF Port to submit quotes in its assigned options series into MRX. An MRX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[12] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[13] Members may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Member's particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. MRX must manage the security and message

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the (i) Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively, for single leg orders, or (ii) Complex Order Price Protection as defined in Options 3, Section 16(c)(1) for Complex Orders. *See* Supplementary Material .03(c) to Options 3, Section 7.

[5] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

[6] Today, 63% of Market Makers cap their SQF Ports and SQF Purge Ports on MRX. The Exchange notes that of the Market Makers currently registered on MRX, there is a mix of size of Market Makers that cap.

[7] For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[8] MRX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, MRX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on MRX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

[9] *See* Securities Exchange Act Release No. 96120 (October 21, 2022), 87 FR 65105 (October 27, 2022) (SR–MRX–2022–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7 in Connection With a Technology Migration).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

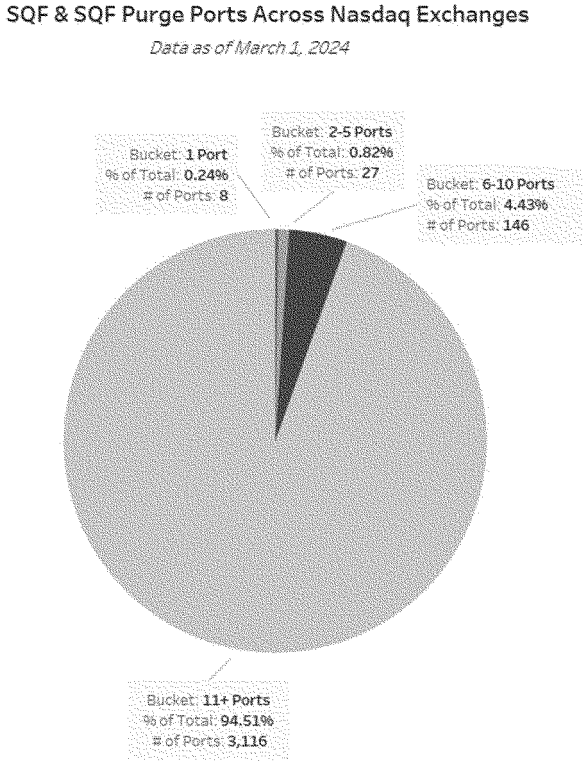
[12] For example, a Market Maker or may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[13] MRX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, MRX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on MRX and only Market Makers may utilize SQF Ports.

traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on MRX has led the Exchange to select $27,500 as the amended monthly cap for SQF Ports and SQF Purge Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (''Cboe'') limits usage on each port and assesses fees for incremental usage.[14]

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $27,500 per month. MRX believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, MRX Market Makers may pay more to obtain multiple ports on MRX. BOX Exchange LLC (''BOX'') assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[15] MIAX's MIAX Express Interface (''MEI'') Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[16]

The number of ports that members choose to purchase varies widely. Today, on MRX, 2 Market Makers have 1 SQF Ports/SQF Purge Ports, no Market Makers have 2–5 SQF Ports/SQF Purge Ports, 2 Market Makers have between 6–10 SQF Ports/SQF Purge Ports, and 6 Market Makers have more than 10 SQF Ports/SQF Purge Ports. The chart below represents the number of SQF Ports and SQF Purge Ports that are subscribed to by members across the six Nasdaq affiliated options markets.

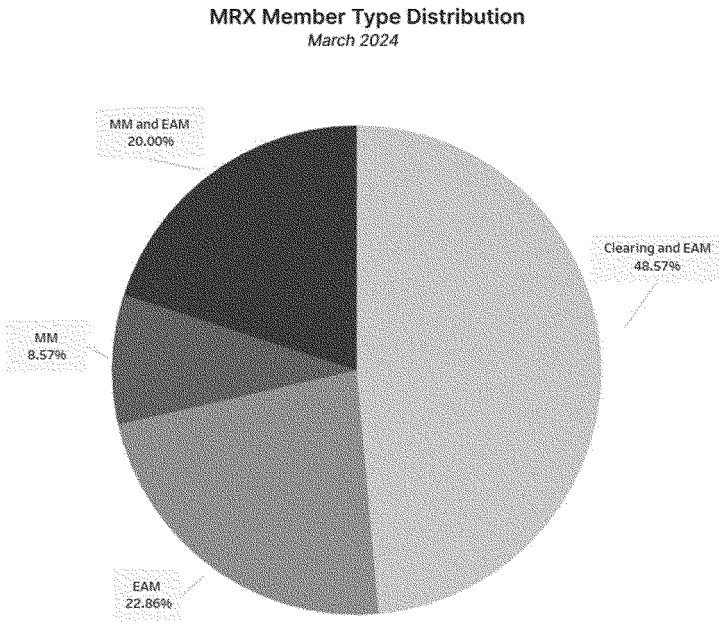


The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. The following chart represents the classification of MRX Members and the percentage of Market Makers.

[14] Each Cboe Binary Order Entry (''BOE'') or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. *See* Cboe's Fees Schedule.

[15] *See* BOX's Fee Schedule.

[16] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.



Unlike other market participants, Market Makers are subject to market making and quoting obligations.[17] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to MRX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[18] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[19] and CMM Trading Right Fees,[20] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to MRX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on MRX, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[21] In that rule change,[22] NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[23]

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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

[17] *See* Options 2, Sections 4 and 5.

[18] *See* Options 3, Section 8.

[19] *See* Options 7, Section 5, E.

[20] *See* Options 7, Section 5, F.

[21] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

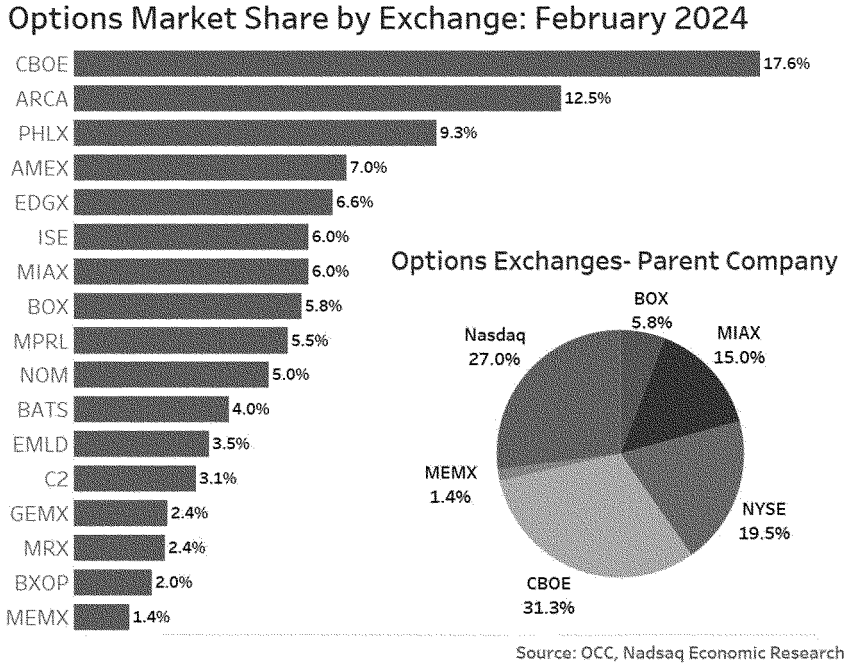
[22] *Id* at 38788.

[23] *Id* at 38790.

necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Other exchanges amended certain costs attributed to Market Makers.[24] In 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[25] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [26]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair MRX's ability to compete among other options markets. Additionally, BOX assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[27] MIAX's MEI Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[28]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair MRX's ability to compete among other options markets.

Intramarket Competition

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF

[24] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[25] *See* Securities Exchange Act No. 96824(February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[26] *Id* at 8976.

[27] *See* BOX's Fee Schedule.

[28] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.

Purge Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[29] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to MRX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[30] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[31] and CMM Trading Right Fees,[32] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to MRX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on MRX, thereby promoting liquidity, quote competition, and trading opportunities.

The Exchange's proposal to remove the italicized language in Options 7, Section 6 related to a technology migration that took place in 2022 does not impose an undue burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2022 technology migration.

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.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2024–07 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–MRX–2024–07. 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–MRX–2024–07 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06323 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[29] *See* Options 2, Sections 4 and 5.

[30] *See* Options 3, Section 8.

[31] *See* Options 7, Section 5, E.

[32] *See* Options 7, Section 5, F.

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99787; File No. SR–GEMX–2024–07]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

March 20, 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 7, 2024, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 its Rules at Options 7, Section 6, C, Ports and Other Services.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–GEMX–2023–16) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–GEMX–2023–16 and replaced it with SR–GEMX–2023–19. On January 16, 2023, the Exchange withdrew SR–GEMX–2023–19 and submitted SR–GEMX–2024–03. On March 7, 2024, the Exchange withdrew SR–GEMX–2024–03 and submitted this filing.

office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 6, C, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports [4] and SQF Purge Ports.[5]

Today, GEMX assesses $1,250 per port, per month for an SQF Port as well as an SQF Purge Port.[6] Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of $17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to increase the SQF Port and SQF Purge Port monthly cap fee of $17,500 per month to $27,500 per month.[7] The Exchange is not amending the $1,250 per port, per month SQF Port and SQF Purge Port. As is the case today, the Exchange would not assess a Member an SQF Port or SQF Purge Port fee beyond the monthly cap once the Member has exceeded the monthly cap for the respective month.

Despite increasing the monthly cap for SQF Ports and SQF Purge Ports from $17,500 per month to $27,500 per month, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap.

Pursuant to Supplementary Material .03(c) to Options 3, Section 7, Market Makers may only enter interest into SQF in their assigned options series. Pursuant to Supplementary Material .03(c) to Options 3, Section 7, the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. A GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[8] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of 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 members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is reasonable because despite the increase in the monthly cap, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Additionally, a GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[12] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[13] Members may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Member's particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. GEMX must manage the security and message traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on GEMX has led the Exchange to select $27,500 as the amended monthly cap for SQF Ports and SQF

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively. *See* Supplementary Material .03(c) to Options 3, Section 7.

[5] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

[6] The Exchange proposes to add a comma between ''per port'' and ''per month'' in the Options 7, Section 6, C, SQF Port and SQF Purge Port Fee rule text. The Exchange also proposes to remove an extraneous period in Options 7, Section 6, C, in the second paragraph.

[7] Today, 62% of GEMX Market Makers have capped their SQF Ports and SQF Purge Ports on GEMX. The Exchange notes that of the Market Makers currently registered on GEMX, there is a mix of size of Market Makers that cap.

[8] For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[9] GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

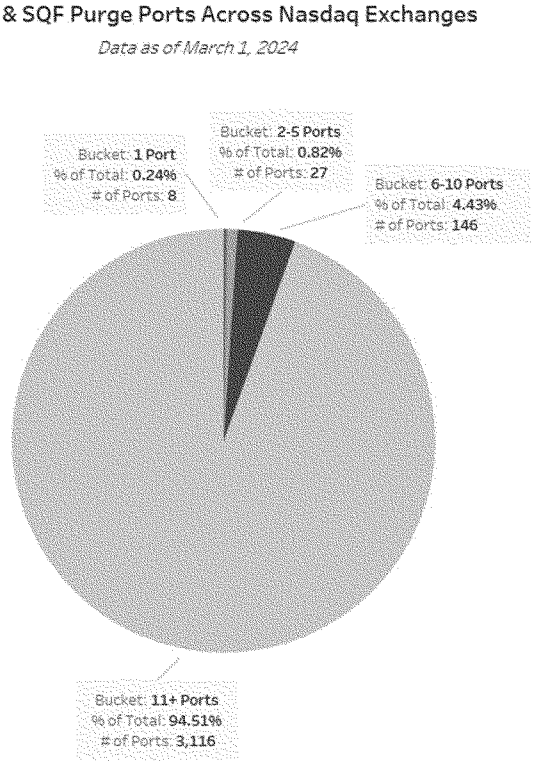
[12] For example, a Market Maker or may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[13] GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports.

Purge Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (''Cboe'') limits usage on each port and assesses fees for incremental usage.[14]

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $27,500 per month. GEMX believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, GEMX Market Makers may pay more to obtain multiple ports on GEMX. BOX Exchange LLC (''BOX'') assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[15] MIAX's MIAX Express Interface (''MEI'') Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[16]

The number of ports that members choose to purchase varies widely. Today, on GEMX, no Marker Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker had 2–5 SQF Ports/SQF Purge Ports, 4 Market Makers have between 6–10 SQF Ports/SQF Purge Ports, and 8 Market Makers have more than 11 SQF Ports/SQF Purge Ports. The chart below represents the number of SQF Ports and SQF Purge Ports that are subscribed to by members across the six Nasdaq affiliated options markets.

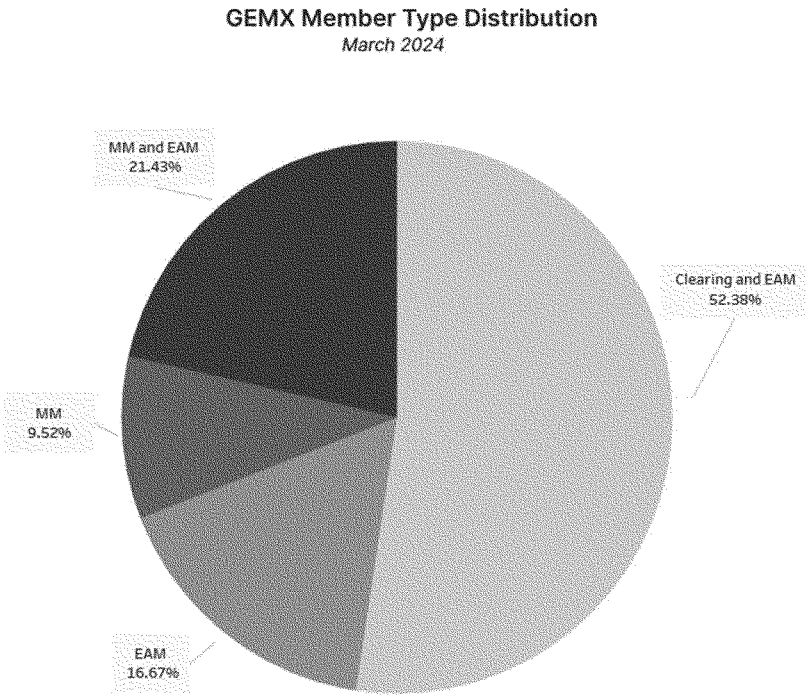


The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. The following chart represents the classification of GEMX Members and the percentage of Market Makers.

[14] Each Cboe Binary Order Entry (''BOE'') or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. *See* Cboe's Fees Schedule.

[15] *See* BOX's Fee Schedule.

[16] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.



Unlike other market participants, Market Makers are subject to market making and quoting obligations.[17] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[18] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[19] and CMM Trading Right Fees,[20] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[21] In that rule change,[22] NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[23]

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased

[17] *See* Options 2, Sections 4 and 5.

[18] *See* Options 3, Section 8.

[19] *See* Options 7, Section 6, A.

[20] *See* Options 7, Section 6, B.

[21] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[22] *Id* at 38788.

[23] *Id* at 38790.

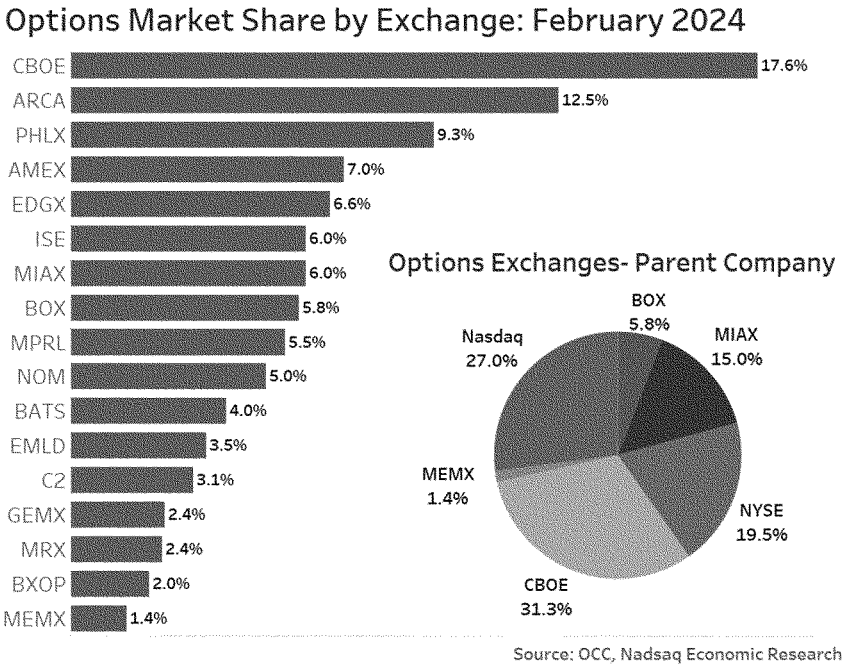
liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Other exchanges amended certain costs attributed to Market Makers.[24] In 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[25] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [26] Additionally, BOX Exchange LLC (''BOX'') assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[27] MIAX's MIAX Express Interface (''MEI'') Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[28]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair GEMX's ability to compete among other options markets.

Intramarket Competition

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market

[24] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[25] *See* Securities Exchange Act No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[26] *Id* at 8976.

[27] *See* BOX's Fee Schedule.

[28] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.

participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[29] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[30] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[31] and CMM Trading Right Fees,[32] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

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.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–GEMX–2024–07 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–GEMX–2024–07. 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–GEMX–2024–07 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06324 Filed 3–25–24; 8:45 am]

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[29] *See* Options 2, Sections 4 and 5.

[30] *See* Options 3, Section 8.

[31] *See* Options 7, Section 6, A.

[32] *See* Options 7, Section 6, B.

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99801; File No. SR–NYSEARCA–2024–27]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the 7RCC Spot Bitcoin and Carbon Credit Futures ETF

March 20, 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 13, 2024, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 list and trade shares of the 7RCC Spot Bitcoin and Carbon Credit Futures ETF under NYSE Arca Rule 8.500–E (Trust Units). 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 list and trade shares (''Shares'') of the 7RCC Spot Bitcoin and Carbon Credit Futures ETF (the ''Fund'') under NYSE Arca Rule 8.500–E.[4]

The Fund is a series of the Tidal Commodities Trust I (the ''Trust''), a Delaware statutory trust organized on February 10, 2023.[5] The Trust has no fixed termination date. The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,[6] and is not required to register under such act.

The sponsor of the Trust is Tidal Investments LLC (the ''Sponsor''). The Sponsor is registered as a commodity pool operator and a commodity trading adviser with the Commodity Futures Trading Commission (the ''CFTC'') and is a member of the National Futures Association.

The administrator of the Fund is Tidal ETF Services (the ''Administrator''). The custodian of the Fund's bitcoin holdings is Gemini Trust Company, LLC (the ''Bitcoin Custodian''). The Sponsor will appoint a non-digital custodian (the ''Non-Digital Custodian'' and, together with the Bitcoin Custodian, the ''Custodians''), who will serve as the Fund's custodian with respect to its cash and cash equivalents,[7] as well as any investments in connection with its exposure to carbon credit futures contracts.

The Fund's Investment Objective and Strategy

According to the Registration Statement, the Fund's investment objective is to reflect the daily changes of the price of bitcoin and the value of carbon credit futures contracts (''Carbon Credit Futures''), as represented by the Vinter Bitcoin Carbon Credits Index (the ''Index''), less expenses from the Fund's operations.

The Fund will pursue its investment objective by investing 80% of its assets in bitcoin and the remaining 20% of its assets in financial instruments, including swap agreements, that provide exposure to Carbon Credit Futures represented by the Index. The Index seeks to provide exposure to bitcoin with an environmentally responsible approach by offsetting carbon emissions and is designed to track the performance of investing in a portfolio comprised of 80% of bitcoin and 20% Carbon Credit Futures. The Index's Carbon Credit Futures are linked to the value of emissions allowances issued under the following ''cap-and-trade'' regimes: the European Union Emissions Trading System (''EU ETS''), the California Carbon Allowance (''CCA''), and the Regional Greenhouse Gas Initiative (''RGGI''). The Fund will gain exposure to these Carbon Credit Futures by entering into swap agreements [8] with one or more major global financial institutions. Specifically, the Fund will enter into over-the-counter (''OTC'') swap agreements that provide the performance of the Carbon Credit Futures portion of the Index. The Fund's obligations (or rights) under the OTC swap agreements will be equal only to the net amount to be paid or owed under the agreements, based on the relative values of the positions held by each counterparty. The Fund will pay a monthly financing amount and in return receive the performance of the Carbon Credit Futures portion of the Index. The term of the swap agreements is expected to be a year long, with monthly payments made thereunder.

Carbon Credit Futures

According to the Registration Statement, Carbon Credit Futures are futures contracts on emissions allowances issued by various ''cap-and-trade'' regulatory regimes that seek to reduce greenhouse gases over time. A cap-and-trade regime typically involves a regulator setting a limit on the total amount of specific greenhouse gases (''GHG'') (such as carbon dioxide (''CO_2'')) that can be emitted by regulated entities. Capping and reducing the cap on GHGs is viewed as a key policy tool in reaching climate change objectives. The regime is designed to promote sustainable development by putting a price on carbon emissions. The regulator will then issue or sell ''emissions allowances'' to regulated entities, which in turn may buy or sell the emissions allowances to the open market. To the extent that the regulator may then reduce the cap on emission allowances, regulated entities are incentivized to reduce their emissions; otherwise, they must purchase additional emission allowances on the open market, where the price of such allowances will likely be increasing as a result of demand, and regulated entities that reduce their emissions will be able to sell unneeded emission allowances for profit. An emission allowance or carbon credit is a unit of emissions (typically one ton of CO_2) that the owner of the allowance or credit is permitted to emit. Futures contracts linked to the value of emission allowances are known as carbon credit futures.

Overview of the Bitcoin Industry and Market

Bitcoin

According to the Registration Statement, bitcoin is the digital asset that is native to, and created and transmitted through the operations of, the peer-to-peer Bitcoin Network, a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called bitcoin, which are recorded on a public transaction ledger known as the Blockchain. Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset trading platforms or in individual end-user-to-end-user transactions under a barter system. Although nascent in use, bitcoin

[4] NYSE Arca Rule 8.500–E governs the listing and trading of Trust Units, which are securities issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities, and/or securities.

[5] On December 18, 2023, the Trust filed with the Commission a registration statement on Form S–1 (File No. 333–____) (the ''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act''). The description of the operation of the Fund herein is based, in part, on the Registration Statement. The Registration Statement in not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[6] 15 U.S.C. 80a–1.

[7] ''Cash Equivalents'' shall mean such investments that, in the view of the Sponsor, are of high credit quality and liquidity and can be converted to cash quickly. Such investments shall include, but are not limited to, (a) cash; (b) debt securities issued or directly or indirectly fully guaranteed or insured by the United States or any agency or instrumentality thereof; (c) commercial paper or finance company paper of sufficient credit quality in the view of the Sponsor; or (d) money market mutual funds.

[8] A swap agreement is a contract entered into primarily with major global financial institutions for a specified period ranging from a day to more than one year. In a standard swap transaction, two parties agree to exchange or ''swap'' payments based on the change in value of an underlying asset or benchmark. For example, two parties may agree to exchange the return (or differentials in returns) earned or realized on a particular investment or instrument.

may be used as a medium of exchange, unit of account or store of value.

The Bitcoin Network is decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of bitcoin. In addition, no party may easily censor transactions on the Bitcoin Network. As a result, the Bitcoin Network is often referred to as decentralized and censorship resistant.

The value of bitcoin is determined by the supply of and demand for bitcoin. New bitcoin are created and rewarded to the parties providing the Bitcoin Network's infrastructure (''miners'') in exchange for their expending computational power to verifying transactions and add them to the ''Blockchain.'' The Blockchain is effectively a decentralized database that includes all blocks that have been solved by miners and it is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Blockchain represents a complete, transparent, and unbroken history of all transactions of the Bitcoin Network.

Bitcoin Network

Bitcoin was first described in a white paper released in 2008 and published under the pseudonym ''Satoshi Nakamoto.'' The protocol underlying Bitcoin was subsequently released in 2009 as open-source software and currently operates on a worldwide network of computers. The Bitcoin Network and its software have been under active development since that time by a group of computer engineers known as ''core developers,'' each of whom operates under a volunteer basis and without strict hierarchical administration.

The Bitcoin Network utilizes a digital asset known as ''bitcoin,'' which can be transferred among parties via the internet. Unlike other means of electronic payments such as credit card transactions, one of the advantages of bitcoin is that it can be transferred without the use of a central administrator or clearing agency. As a central party is not necessary to administer bitcoin transactions or maintain the bitcoin ledger, the term decentralized is often used in descriptions of bitcoin. Unless it is using a third-party service provider, a party transacting in bitcoin is generally not afforded some of the protections that may be offered by intermediaries.

The first step in directly using the Bitcoin Network for transactions is to download specialized software referred to as a ''bitcoin wallet.'' A user's bitcoin wallet can run on a computer or smartphone and can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user can generate one or more unique ''bitcoin addresses,'' which are conceptually similar to bank account numbers. After establishing a bitcoin address, a user can send or receive bitcoin from his or her bitcoin address to or from another user's bitcoin address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account; however, such transactions are not managed by an intermediary and erroneous transactions generally may not be reversed or remedied once sent.

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such bitcoin address, is transparently reflected in the Blockchain and can be viewed by websites that operate as ''blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin Network throughout the internet. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain. The innovative design of the Bitcoin Network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first request a Bitcoin address from the recipient. The sender then uses his or her Bitcoin wallet software to create a proposed transaction that is confirmed and settled when included in the Blockchain. The transaction would reduce the amount of bitcoin allocated to the sender's bitcoin address and increase the amount allocated to the recipient's bitcoin address, in each case by the amount of bitcoin desired to be transferred. The transaction is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin Network; however, the use of cryptographic verification is believed to prevent the ability to duplicate or counterfeit bitcoin.

Bitcoin Protocol

The Bitcoin protocol is built using open-source software, meaning any developer can review the underlying code and suggest changes. There is no official company or group that is responsible for making modifications to Bitcoin. There are, however, a number of individual developers that regularly contribute to a specific distribution of Bitcoin software known as the ''Bitcoin Core,'' which is maintained in an open-source repository on the website Github. There are many other compatible versions of Bitcoin software, but Bitcoin Core provides the de-facto standard for the Bitcoin protocol, also known as the ''reference software.'' The core developers for Bitcoin Core operate under a volunteer basis and without strict hierarchical administration.

Significant changes to the Bitcoin protocol are typically accomplished through a so-called ''Bitcoin Improvement Proposal'' or ''BIP.'' Such proposals are generally posted on websites, and the proposals explain technical requirements for the protocol change as well as reasons why the change should be accepted. Upon its inclusion in the most recent version of Bitcoin Core, a new BIP becomes part of the reference software's Bitcoin protocol. Several BIPs have been implemented since 2011 and have provided various new features and scaling improvements.

Because Bitcoin has no central authority, updating the reference software's Bitcoin protocol will not immediately change the Bitcoin Network's operations. Instead, the implementation of a change is achieved by users and transaction validators (known as miners) downloading and running updated versions of Bitcoin Core or other Bitcoin software that abides by the new Bitcoin protocol. Users and miners must accept any changes made to the Bitcoin source code by downloading a version of their Bitcoin software that incorporates the proposed modification of the Bitcoin Network's source code. A modification of the Bitcoin Network's source code is only effective with respect to those Bitcoin users and miners who download it. If an incompatible modification is accepted by a less than overwhelming percentage of users and miners, a division in the Bitcoin Network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork'' in the Bitcoin Network.

Such a fork in the Bitcoin Network occurred on August 1, 2017, when a

group of developers and miners accepted certain changes to the Bitcoin Network software intended to increase transaction capacity. Blocks mined on this network now diverge from blocks mined on the Bitcoin Network, which has resulted in the creation of a new blockchain whose digital asset is referred to as ''bitcoin cash.'' Bitcoin and Bitcoin Cash now operate as separate, independent networks, and have distinct related assets (bitcoin and bitcoin cash). Additional forks have followed the Bitcoin Cash fork, including those for Bitcoin Gold and Bitcoin SegWit2X, in the months after the creation of Bitcoin Cash. It is possible that additional ''forks'' will occur in the future.

Bitcoin Transactions

A bitcoin transaction is similar in concept to an irreversible digital check. The transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee and the sender's digital signature. Bitcoin transactions are secured by cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin Network address, or ''wallet,'' is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship.

The use of key pairs is a cornerstone of the Bitcoin Network technology. This is because the use of a private key is the only mechanism by which a bitcoin transaction can be signed. If a private key is lost, the corresponding bitcoin is thereafter permanently non-transferable. Moreover, the theft of a private key provides the thief immediate and unfettered access to the corresponding bitcoin. Bitcoin users must therefore understand that in this regard, bitcoin is similar to cash: that is, the person or entity in control of the private key corresponding to a particular quantity of bitcoin has de facto control of the bitcoin. For large quantities of bitcoin, holders often embrace sophisticated security measures.

The public key is visible to the public and analogous to the Bitcoin Network address. The private key is a secret and is used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, without having to reveal the private key. A user's private key must be kept safe in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could apply the user's digital signature without authorization and send the user's bitcoin to their or another bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (*e.g.,* through a backup), the user may permanently lose access to the bitcoin associated with that private key and bitcoin address.

To prevent the possibility of double-spending bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Thus, the Bitcoin Network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is publicly accessible and downloaded in part or in whole by all users of the Bitcoin Network software program. Any user may validate, through their Bitcoin wallet or a blockchain explorer, that each transaction in the Bitcoin Network was authorized by the holder of the applicable private key, and Bitcoin Network mining software consistent with reference software requirements validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not generally be counterfeited, although it does not protect against the ''real world'' theft or coercion of use of a Bitcoin user's private key, including the hacking of a Bitcoin user's computer or a service provider's systems.

A Bitcoin transaction between two parties is recorded if such transaction is included in a valid block added to the Blockchain. A block is accepted as valid through consensus formation among Bitcoin Network participants. Validation of a block is achieved by confirming the cryptographic hash value included in the block's data and by the block's addition to the longest confirmed blockchain on the Bitcoin Network. For a transaction, inclusion in a block on the Blockchain constitutes a ''confirmation'' of validity. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against double-spending. This layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

Bitcoin Mining—Creation of New Bitcoins

The process by which bitcoin are created and bitcoin transactions are verified is called ''mining.'' To begin mining, a user, or miner, can download and run a mining ''client,'' which, like regular Bitcoin Network software programs, turns the user's computer into a ''node'' on the Bitcoin Network that validates blocks, and, in this case, gives such user the ability to validate transactions and add new blocks of transactions to the Blockchain.

Miners, through the use of the bitcoin software program, engage in a set of prescribed complex mathematical calculations in order to verify transactions and compete for the right to add a block of verified transactions to the Blockchain and thereby confirm bitcoin transactions included in that block's data. The miner who successfully ''solves'' the complex mathematical calculations has the right to add a block of transactions to the Blockchain and is then rewarded with new bitcoin, the amount of which is determined by the Bitcoin protocol, plus any transaction fees paid for the transactions included in such block.

Confirmed and validated bitcoin transactions are recorded in blocks added to the Blockchain. Each block contains the details of some or all of the most recent transactions that are not memorialized in prior blocks, as well as a record of the award of bitcoin to the miner who added the new block. Each unique block can only be solved and added to the Blockchain by one miner; therefore, all individual miners and mining pools on the Bitcoin Network are engaged in a competitive process of constantly increasing their computing power to improve their likelihood of solving for new blocks. As more miners join the Bitcoin Network and its processing power increases, the Bitcoin Network adjusts the complexity of the block-solving equation to maintain a predetermined pace of adding a new block to the Blockchain approximately every ten minutes.

Mathematically Controlled Supply

The method for creating new bitcoin is mathematically controlled in a manner so that the supply of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved every 210,000 blocks. Thus, the current fixed reward for solving a new block is 6.25 bitcoin per block; the reward decreased from 25 bitcoin in July 2016 and 12.5 in May 2020. It is estimated to halve again in

April or May of 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will never exceed 21 million and that bitcoin cannot be devalued through excessive production unless the Bitcoin Network's source code (and the underlying protocol for bitcoin issuance) is altered. As of November 2023, approximately 19.5 million bitcoin are outstanding. The date when the 21 million bitcoin limitation will be reached is estimated to be the year 2140.

Bitcoin Market and Bitcoin Trading Platforms

In addition to using bitcoin to engage in transactions, investors may purchase and sell bitcoin to speculate as to the value of bitcoin in the bitcoin market, or as a long-term investment to diversify their portfolio. The value of bitcoin within the market is determined, in part, by: (i) the supply of and demand for bitcoin in the bitcoin market; (ii) market expectations for the expansion of investor interest in bitcoin and the adoption of bitcoin by individuals; (iii), the number of merchants that accept bitcoin as a form of payment; and (iv) the volume of private end-user-to-end-user transactions.

Although the value of bitcoin is determined by the value that two transacting market participants place on bitcoin through their transaction, the most common means of determining a reference value is by surveying one or more trading platforms where secondary markets for bitcoin exist. The most prominent digital asset trading platforms neither report trade information nor are they regulated in the same way as a national securities exchange. As such, there is some difference in the form, transparency, and reliability of trading data from digital asset trading platforms. Generally speaking, bitcoin data is available from these trading platforms with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or Euro or another digital asset such as ether. OTC dealers or market makers do not typically disclose their trade data.

Currently, there are many digital asset trading platforms operating worldwide and trading platforms represent a substantial percentage of bitcoin buying and selling activity and, therefore, provide large data sets for market valuation of bitcoin. A digital asset trading platform provides investors with a way to purchase and sell bitcoin, similar to stock exchanges like the New York Stock Exchange or Nasdaq, which provide ways for investors to buy stocks and bonds in the ''secondary market.'' Unlike stock exchanges, which are regulated to monitor securities trading activity, digital asset trading platforms are largely regulated as money services businesses (or a foreign regulatory equivalent) and are required to monitor for and detect money-laundering and other illicit financing activities that may take place on the platform. Digital asset trading platforms operate websites designed to permit investors to open accounts with the trading platform and then purchase and sell bitcoin.

As with conventional stock exchanges, an investor opening a trading account and wishing to transact at a digital asset trading platform must deposit an accepted government-issued currency into their account, or a previously acquired digital asset. The process of establishing an account with a digital asset trading platform and trading bitcoin is different from, and should not be confused with, the process of users sending bitcoin from one bitcoin address to another bitcoin address, such as to pay for goods and services. This latter process is an activity that occurs wholly within the confines of the Bitcoin network, while the former is an activity that occurs largely on private websites and databases owned by the digital asset trading platform.

Overview of Commodity Futures Markets and Carbon Markets

Futures Markets

According to the Registration Statement, the Fund will purchase futures contracts or gain exposure to futures contracts through swap agreements. A futures contract is a standardized contract traded on, or subject to the rules of, an exchange that calls for the future delivery of a specified quantity and type of a particular underlying asset at a specified time and place or alternatively may call for cash settlement. Futures contracts are traded on a wide variety of underlying assets, including bonds, interest rates, agricultural products, stock indexes, currencies, energy, metals, economic indicators and statistical measures. The notional size and calendar term futures contracts on a particular underlying asset are identical and are not subject to any negotiation, other than with respect to price and the number of contracts traded between the buyer and seller.

Certain futures contracts settle in cash. The cash settlement amount reflects the difference between the contract purchase/sale price and the contract settlement price. The cash settlement mechanism avoids the potential for either side to have to deliver the underlying asset. For other futures contracts, the contractual obligations of a buyer or seller may generally be satisfied by taking or making physical delivery of the underlying asset or by making an offsetting sale or purchase of an identical futures contract on the same or linked exchange before the designated date of delivery. The difference between the price at which the futures contract is purchased or sold and the price paid for the offsetting sale or purchase, after allowance for brokerage commissions and exchange fees, constitutes the profit or loss to the trader.

Futures contracts involve, to varying degrees, elements of market risk. Additional risks associated with the use of futures contracts are imperfect correlation between movements in the price of the futures contracts and the level of the underlying benchmark and the possibility of an illiquid market for a futures contract. With futures contracts, there is minimal but some counterparty risk to a fund since futures contracts are exchange traded and the exchange's clearing house, as counterparty to all exchange-traded futures contracts, effectively guarantees futures contracts against default. Many futures exchanges and boards of trade limit the amount of fluctuation permitted in futures contract prices during a single trading day. Once the daily limit has been reached in a particular contract, no trades may be made that day at a price beyond that limit or trading may be suspended for specified times during the trading day. Futures contracts prices could move to the limit for several consecutive trading days with little or no trading, thereby preventing prompt liquidation of futures positions.

Carbon Markets

Carbon markets are designed to reduce GHG emissions and promote sustainable development by putting a price on carbon. Carbon markets are markets where GHG emissions are commodified as a tradable unit either as an emission allowance in government compliance markets or as a verified emission reduction/removal credit in voluntary markets. There are two types of instruments that are traded in carbon markets: carbon credits (sometimes called ''allowances'') and carbon offsets. The two main types of carbon markets are compliance carbon markets (''CCMs'') and voluntary carbon markets (''VCMs'').

CCMs are established by governments and operate under a cap-and-trade system. Cap-and-trade regimes set

emission limits (*i.e.,* the right to emit a certain quantity of GHG emissions), which can be allocated or auctioned to the parties in the mechanism up to the total emissions cap. In these types of markets, a regulator will define an allowed maximum level of GHG emissions (the ''Cap'') for a certain group of entities (*e.g.,* countries, companies, or facilities). The Cap is then subdivided into distinct emission allowances, which are distributed by regulated entities. To stay in compliance with the regulator, the covered entities need to submit one allowance for each ton of carbon dioxide equivalent emitted during a compliance period (usually a year). The initial allocation of allowances to covered entities can be free of charge, partially free, and/or sold at auction by the regulator.

In a VCM, often referred to as a ''baseline-and-credit'' system, a variety of private organization allows individuals or businesses to purchase offsets from emission reduction or removal projects. In these markets, the private organization defines how emission (reduction or removal) credits can be generated by activities/projects that reduce or remove GHG emissions from the atmosphere compared to a reference scenario (baseline) that reflects the counterfactual situation without such activities. The difference between the baseline emissions and the emissions of the activity determines how many credits can be issued. To generate emission credits, verification of the reduction/removal by an officially recognized institution (a verifier) is necessary to calculate the reduction/removal of emissions into its CO_2 equivalent (''CO2e''). The carbon credit represents one metric-ton of CO2e and can then be used as offsets against mandatory or voluntary GHG emission targets or other policy instruments aiming at GHG mitigation.

Carbon Credit Futures are an expansion of the carbon market. Carbon Credit Futures are credit instruments where the buyer seeks to have exposure to CCMs or VCM carbon offset projects, but without directly buying or selling allowances or investing in any projects.

The Index

The Index is designed to track the performance of investing in a portfolio comprised of 80% bitcoin and 20% Carbon Credit Futures, which are linked to the value of emissions allowances issued under the following cap-and-trade regimes: the European Union Emissions Trading System, the California Carbon Allowance, and Regional Greenhouse Gas Initiative. The purpose of the Index is to obtain exposure to bitcoin with an environmentally responsible approach by offsetting carbon emissions. Because the Fund's investment objective is to track the daily changes of the price of bitcoin and Carbon Credit Futures, changes in the price of the Shares will vary from changes in the spot price of bitcoin, carbon credits, and Carbon Credit Futures individually.

Invierno AB (''Vinter'') administers and calculates the bitcoin portion of the Index. According to the Sponsor, Vinter is a trusted index provider with experience constructing and maintaining indexes relied upon by banks and exchange-traded products. Vinter is a registered benchmark administrator governed by the European Benchmarks Regulation (2016/1011) and included in the European Securities and Markets Authority's register over benchmark administrators.

To calculate the value of bitcoin, Vinter selects what it considers to be reputable bitcoin trading platforms and takes the last price on each trading platform. Vinter then takes the median price across these trading platforms and calculates the average price during the selected time window to determine the value of bitcoin at 4:00 p.m. Eastern Time (''E.T.'').

The Carbon Credit Futures component of the Index is calculated by Solactive and built with a combination of three carbon credit indices, each of which is calculated and administered by a third party: (i) Solactive Carbon European Union Allowance Futures ER Index (SOCARBN), which tracks EU ETS futures; (ii) Solactive California Carbon Rolling Futures ER Index (SOCCAER), which tracks CCA futures; and (iii) an index that tracks RGGI futures. The weights of the components are adjusted once per year (in November) and the weights are proportional to the trading volume over the last six months. The combination of exposure to the three underlying indices provides the Index with returns tied to futures contracts on carbon credits connected to EU ETS, CCA, and RGGI. The value of the Carbon Credit Futures that comprise the Index will be based on market prices. The Index includes only Carbon Credit Futures that mature in December of the next one to two years.

Vinter is the benchmark administrator for the bitcoin portion of the Index. As benchmark administrator for the bitcoin portion of the Index, Vinter is the central recipient of input data and evaluates the integrity and accuracy of input data on a consistent basis. Solactive is the benchmark administrator for the Carbon Credit Futures portion of the Index. Solactive calculates the value of the Carbon Credit Futures portion of the Index and the value of the overall Index.

The Index is rebalanced quarterly, starting at the end of January. After a rebalance, the portfolio is updated so that its current weights per asset equal the rebalancing weights per asset.

Valuation of Bitcoin

The Fund uses the same methodology that the Index does to determine the value of bitcoin for purposes of calculating the NAV of the Fund. The Index requires each digital asset trading platform used to calculate the price of bitcoin to meet each of the following criteria:

- Operating history as a digital asset trading platform for a minimum of two years;
- Implemented trading, deposits, and withdrawal fees for a minimum of one month without interruption;
- Met a minimum monthly volume threshold of $30 million with respect to total trading volume;
- Provided reliable, continuous, and valid market data for a minimum of one month;
- Offered the possibility to withdraw and deposit for a minimum of one month, settling in two to seven business days;
- Chosen a jurisdiction of incorporation that offers sufficient investor protection, such as Financial Action Task Force (''FATF''), FATF-style regional bodies (''FSRBs''), or Moneyval member states;
- Complied with relevant anti-money laundering and know-your-customer regulations;
- Cooperated with requests from Vinter and relevant regulatory bodies;
- Has not been domiciled in a jurisdiction subject to EU restrictive measures (sanctions);
- Provided information concerning ownership and corporate structure; and
- Has not been declared unlawful by any governmental authority or agency with jurisdiction over the exchange.

Digital asset trading platforms meeting these criteria are used to calculate the price of the bitcoin portion of the Index (the ''Index Pricing Sources''). The selection of Index Pricing Sources may evolve from time to time, and Vinter may make changes to the eligibility requirements. As of the date of this prospectus, the following digital asset trading platforms are used to calculate the Index price: Kraken, Coinbase, Bitstamp, Itbit, Gemini, Gate.io, and *Crypto.com.*

Custody of the Fund's Assets

The Bitcoin Custodian will establish accounts that hold the bitcoins

deposited with the Bitcoin Custodian on behalf of the Fund, pursuant to the agreement between the Trust, on behalf of the Fund, and the Bitcoin Custodian (the ''Bitcoin Custody Agreement''). The Non-Digital Custodian will custody the Fund's investments in cash and cash equivalents required as part of the Fund's swap agreements that provide exposure to the returns of the Carbon Credit Futures portion of the Index.

With respect to the settlement of Shares in response to the placement of creation orders and redemption orders from Authorized Purchasers (as defined below), the Sponsor will retain discretion with respect to which of the Custodians and accompanying assets is selected to facilitate the respective order.

The Sponsor will maintain ownership and control of bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Custody of Bitcoin

The Fund is responsible for acquiring bitcoin from a ''Bitcoin Trading Counterparty.'' [9] Once the bitcoin has been transferred to the Bitcoin Custodian, it will be stored pursuant to the terms of the Bitcoin Custody Agreement.

Bitcoin private keys are stored in two different forms: ''hot'' storage, whereby the private keys are stored on secure, internet-connected devices, and ''cold'' storage, where digital currency private keys are stored completely offline. The Bitcoin Custody Agreement requires the Bitcoin Custodian to hold the Fund's bitcoin in cold storage, unless required to facilitate withdrawals as a temporary measure. The Bitcoin Custodian will use segregated cold storage bitcoin addresses for the Fund which are separate from the bitcoin addresses that the Bitcoin Custodian uses for its other customers and which are directly verifiable via the Bitcoin Blockchain. The Bitcoin Custodian will at all times record and identify in its books and records that such bitcoins constitute the property of the Fund. The Bitcoin Custodian will not withdraw the Fund's bitcoin from the Fund's account with the Bitcoin Custodian, or loan, hypothecate, pledge or otherwise encumber the Fund's bitcoin, without the Fund's instruction.

The Sponsor has evaluated the Bitcoin Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Fund's bitcoin holdings and believes these are designed consistent with accepted industry practices to protect against theft, loss, and unauthorized and accidental use of the private keys.

Net Asset Value

According to the Registration Statement, the Fund's NAV per Share is calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the total number of outstanding Shares.

The Administrator will calculate the NAV of the Fund once each trading day as of the earlier of the close of trading on the Exchange or 4:00 p.m. E.T. The NAV for a normal trading day will be released after 4:00 p.m. E.T.

In determining the NAV of the Fund, the Administrator values the bitcoin held by the Fund based on the methodology used by the Index, unless otherwise determined by the Sponsor in its sole discretion. If the Index is not available or the Sponsor in its sole discretion determines that the price of bitcoin determined by the Index should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.[10] For purposes of determining the NAV of the Fund, swap agreements held by the Fund will be fair valued in accordance with the policy approved by the Sponsor, and futures contracts held by the Fund will be valued based on market price as of the time the NAV is calculated on each trading day.

Intraday Indicative Value

According to the Registration Statement, in order to provide updated information relating to the Fund for use by shareholders and market professionals, an updated intraday indicative value (''IIV'') will be calculated and disseminated throughout the core trading session on each trading day. The IIV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the Fund's assets.

The IIV disseminated during the Exchange's core trading session should not be viewed as an actual real time update of the NAV, because NAV per Share is calculated only once at the end of each trading day based upon the relevant end of day values of the Fund's investments. The IIV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange's Core Trading Session.[11]

Creation and Redemption of Shares

According to the Registration Statement, when the Fund creates or redeems its Shares, it will do so only in ''Baskets'' (blocks of 10,000 Shares) based on the NAV per Share. ''Authorized Purchasers'' are the only persons that may place orders to create and redeem Baskets. Authorized Purchasers must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company (''DTC'') participants.

To become an Authorized Purchaser, a person must enter into an Authorized Purchaser Agreement. The Authorized Purchaser Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the cash or Shares required for such creation and redemptions.

The ''Basket Price'' for the creation or redemption of Baskets is the NAV per Share (net of accrued but unpaid expenses and liabilities) multiplied by the number of Shares comprising a Basket. The Basket Price required to create each Basket changes from day to day. On each day that the Exchange is open for regular trading, the Administrator adjusts the Basket Price as appropriate to reflect accrued expenses and any loss in value of the assets that may occur. The computation is made by the Administrator each business day, prior to the commencement of trading on the

[9] Each Bitcoin Trading Counterparty must be approved by the Sponsor on behalf of the Fund before the Fund may engage in transactions with the entity. The Sponsor continuously reviews all approved Bitcoin Trading Counterparties and will reject the approval of any previously approved Bitcoin Trading Counterparty if new information arises regarding the entity that puts the appropriateness of that entity as an approved Bitcoin Trading Counterparty in doubt. The Bitcoin Trading Counterparties with which the Sponsor will engage in bitcoin transactions are unaffiliated third parties of the Trust and Sponsor and are not acting as agents of the Trust, the Sponsor, or any Authorized Purchaser (as defined below), and all transactions will be done on an arms-length basis. There is no contractual relationship between each Bitcoin Trading Counterparty and the Trust, the Sponsor, or any Authorized Purchaser. When seeking to purchase bitcoin on behalf of the Fund, the Sponsor will seek to purchase bitcoin at commercially reasonable prices and terms from any of the approved Bitcoin Trading Counterparties. Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

[10] The Sponsor does not anticipate that the need to ''fair value'' bitcoin will be a common occurrence.

[11] Several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

Exchange. The Basket Price so determined is communicated to all Authorized Purchasers and made available on the Fund's website for the Shares.

The Authorized Purchasers will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Purchasers will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Fund or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

The Fund will create shares by receiving bitcoin from a third party that is not the Authorized Purchaser and the Fund—not the Authorized Purchaser—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the Authorized Purchaser with respect to the delivery of the bitcoin to the Fund or acting at the direction of the Authorized Purchaser with respect to the delivery of the bitcoin to the Fund. The Fund will redeem shares by delivering bitcoin to a third party that is not the Authorized Purchaser and the Fund—not the Authorized Purchaser—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the Authorized Purchaser with respect to the receipt of the bitcoin from the Fund or acting at the direction of the Authorized Purchaser with respect to the receipt of the bitcoin from the Fund.

Creation Procedures

According to the Registration Statement, on any Business Day,[12] an Authorized Purchaser may create Shares by placing an order to purchase one or more Baskets with the transfer agent (''Transfer Agent'') through the marketing agent (''Marketing Agent'') in exchange for cash (a ''Purchase Order''). Purchase Orders must be placed by 2:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier, or an earlier time as determined and communicated by the Sponsor and its agent. The day on which a Purchase Order is accepted by the Transfer Agent is considered the ''Purchase Order Date.''

By placing a Purchase Order, an Authorized Purchaser agrees to deposit cash as determined by the Sponsor with the Fund's Non-Digital Custodian. The total deposit required to create each basket will be an amount of cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created under the Purchase Order is in proportion to the total number of Shares outstanding on the date the Purchase Order is received. The Sponsor, through the Transfer Agent, shall notify the Authorized Purchaser of the amount of cash to be included in deposits to create Baskets by email or telephone correspondence and such amount will be available via the Fund's website.

An Authorized Purchaser who places a Purchase Order is responsible for transferring to the Fund's account with the Non-Digital Custodian the required amount of cash by the end of the next Business Day following the Purchase Order Date or as agreed to by the Authorized Purchaser, Sponsor, Marketing Agent, and Transfer Agent in advance of when the Purchase Order is placed. Upon receipt of the deposit amount, the Administrator will cause DTC to credit the number of Baskets ordered to the Authorized Purchaser's DTC account.

Redemption Procedures

On any business day, an Authorized Purchaser may place an order with the Transfer Agent to redeem one or more Baskets (a ''Redemption Order''). Redemption Orders must be placed by 2:00 p.m. E.T., or the close of regular trading on the Exchange, whichever is earlier. A Redemption Order will be effective on the date it is accepted by the Transfer Agent (''Redemption Order Date'').

By placing a Redemption Order, an Authorized Purchaser agrees to deliver the Redemption Basket to be redeemed through DTC's book-entry system to the Fund's account with the Non-Digital Custodian not later than the end of the next Business Day following the effective date of the Redemption Order (''Redemption Distribution Date'') or the end of such later Business Day as agreed to by the Authorized Purchaser and the Transfer Agent in advance of when the Redemption Order is placed. Failure to consummate such delivery shall result in the cancellation of the order.

The redemption distribution due from the Fund is delivered to the Authorized Purchaser on the Redemption Distribution Date if the Fund's DTC account has been credited with the Baskets to be redeemed pursuant to the terms of the Authorized Purchaser Agreement.

Standard for Approval

On January 10, 2024, the Commission approved the listing and trading of shares of Grayscale Bitcoin Trust (BTC) and Bitwise Bitcoin ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares); the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500–E (Trust Units); the iShares Bitcoin Trust and Valkyrie Bitcoin Fund under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and the ARK 21Shares Bitcoin ETF, Invesco Galaxy Bitcoin ETF, VanEck Bitcoin Trust, the WisdomTree Bitcoin Fund, Fidelity Wise Origin Bitcoin Fund, and Franklin Bitcoin ETF under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) (collectively, the ''Bitcoin ETPs'').[13] In the Bitcoin ETP Approval Order, the Commission found that the proposed rule changes to list the Bitcoin ETPs demonstrated that there were ''sufficient 'other means' of preventing fraud and manipulation,'' including that:

> [B]ased on the record before the Commission and the improved quality of the correlation analysis in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of ''significant size'' related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].[14]

The Fund is structured and will operate in a manner materially the same as the Bitcoin ETPs. With respect to the Fund's bitcoin holdings, the Sponsor believes that the Exchange's ability to obtain information regarding trading in bitcoin futures from the CME, which, like the Exchange, is a member of the Intermarket Surveillance Group (''ISG''), would assist the Exchange in detecting potential fraud or manipulation with respect to trading in the Shares. In

[12] For purposes of processing creation and redemption orders, a ''Business Day'' means any day other than a day when the Exchange is closed for regular trading.

[13] Securities Exchange Act Release No. 34–99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SRNYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SRCboeBZX–2023–044; SR-CboeBZX–2023–072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Bitcoin ETP Approval Order'').

[14] Bitcoin ETP Approval Order, 89 FR at 3009–11.

addition, with respect to the Fund's Carbon Credit Futures holdings, the Sponsor believes that the Exchange would be able to obtain information regarding trading in Carbon Credit Futures that would similarly assist in surveilling for potential fraud or manipulation. EU ETS futures trade on ICE Endex Markets B.V. (''ICE Endex''),[15] with which the Exchange has entered into a comprehensive surveillance sharing agreement (''CSSA''). CCA futures and RGGI futures are traded on ICE Futures U.S.,[16] which, like the Exchange, is a member of the ISG. Accordingly, the Sponsor believes that the Exchange's ability to share information with ICE Endex and ICE Futures U.S., pursuant to a CSSA or common ISG membership, would assist in surveilling for fraudulent and manipulative acts and practices. The Sponsor thus believes that, for reasons similar to those set forth in the Bitcoin ETP Approval Order, listing and trading Shares of the Fund would be consistent with the requirements of the Act.

Availability of Information

The NAV per Share will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IIV will be calculated every 15 seconds throughout the core trading session each trading day.

Quotation and last sale information for bitcoin will be widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. In addition, real-time price (and volume) data for bitcoin is available by subscription from Reuters and Bloomberg. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. The real-time version of the value of the Index will be disseminated once every 15 seconds during the Core Trading Session. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded.

The intraday, closing prices, and settlement prices of the Carbon Credit Futures will be readily available from automated quotation systems, published or other public sources, or major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Real-time data for Carbon Credit Futures will be available by subscription through on-line information services. Delayed futures and options on futures information on current and past trading sessions and market news will also be available. The specific contract specifications for Carbon Credit Futures will also be available on such websites, as well as other financial informational sources.

On each business day, the Sponsor will publish the value of the Index, the Fund's NAV, and the NAV per Share on the Fund's website as soon as practicable after its determination. If the NAV and NAV per Share have been calculated using a price per bitcoin other than the price of bitcoin determined by the Index, the publication on the Fund's website will note the valuation methodology used and the price per bitcoin resulting from such calculation.

The Fund will provide website disclosure of its NAV and NAV per Share daily. The website disclosure of the Fund's NAV and NAV per Share will occur at the same time as the disclosure by the Sponsor of the NAV and NAV per Share to Authorized Purchasers so that all market participants are provided such portfolio information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current NAV and NAV per Share of the Fund through the Fund's website, as well as from one or more major market data vendors.

The value of the Index, as well as additional information regarding the Index, will be available on a continuous basis on the Fund's website.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Sponsor will cause information about the Shares to be posted to the Fund's website: (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Fund, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Fund's effective prospectus, in a form available for download; and (4) the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Fund. The Fund's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Fund's holdings, (ii) the counterparty to and value of swaps, forward contracts, and any other financial instruments tracking the Index, and (iii) the total cash and cash equivalents held in the Fund's portfolio, if applicable.

The Fund's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[17] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the

[15] ICE Endex is regulated in the Netherlands by the Dutch Authority for the Financial Markets (''AFM'') as a RM, as defined in MIFID II, which is implemented in Dutch Act on Financial Supervision (''DFSA''). The license as a RM is obtained under Section 5:26(1) of the DFSA, resulting in an authorization by the Minister of Dutch Ministry of Finance to operate a RM and supervised by the AFM. In the UK, ICE Endex is a Recognized Overseas Investment Exchange by the Financial Conduct Authority. *See https://www.ice.com/endex/regulation#:~:text=The%20Dutch%20Authority%20for%20Consumers,energy%20industry%20and%20wholesale%20trading.* ICE Endex is also recognized by the CFTC as an authorized Foreign Board of Trade. *See https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/orgiceereg order170110.pdf.*

[16] ICE Futures U.S. is a registered Designated Contract Market regulated by the CFTC and subject to the requirements of the Commodity Exchange Act (''CEA''), as amended, and the regulations issues by the CFTC pursuant to the CEA. *See https://www.ice.com/futures-us.*

[17] *See* NYSE Arca Rule 7.12–E.

Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV or the value of the Index occurs. The real-time version of the value of the Index will be disseminated once every 15 seconds during the Core Trading Session. If the interruption to the dissemination of the IIV or to the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.500–E. The trading of the Shares will be subject to NYSE Arca Rule 8.500–E(f), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered market makers in Trust Units to facilitate surveillance. Pursuant to NYSE Arca Rule 8.500–E(f), an ETP Holder acting as a registered market maker in Trust Units must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a market maker in Trust Units shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

For initial and continued listing as proposed herein, the Fund will be in compliance with Rule 10A–3 under the Act, and the Trust will rely on the exception contained in Rule 10A–3(c)(7).[18] A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[19] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG[20] or with which the Exchange has in place a CSSA. Specifically, the Exchange or FINRA, on behalf of the Exchange, may communicate as needed and may obtain information regarding trading in bitcoin futures from the CME, which is a member of the ISG. Also, the Exchange or FINRA, on behalf of the Exchange, may communicate as needed and may obtain information regarding trading in Carbon Credit Futures from ICE Endex, with which the Exchange has in place a CSSA, and ICE Futures U.S., which is a member of the ISG.

The Exchange believes that ICE Endex and ICE Futures U.S. are regulated[21] markets of significant size related to the Carbon Credit Futures held by the Fund and that it is reasonably likely that any bad actor trying to manipulate the price of the Fund would have to trade on those markets. As noted above, the EU ETS futures held by the Fund trade on ICE Endex, and CCA futures and RGGI futures held by the Fund are traded on ICE Futures U.S. Therefore, ICE Endex and ICE Futures U.S. are appropriate markets to surveil in order to detect and deter fraud and manipulation.

The Exchange is also able to obtain information regarding trading in the Shares, the underlying bitcoin, Carbon Credit Futures, bitcoin futures contracts, options on bitcoin futures, or any other bitcoin derivative through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on U.S. futures exchanges, which are members of the

[18] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

[19] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

[21] *See* notes 15 & 16, *supra.*

ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Under NYSE Arca Rule 8.500–E(f), an ETP Holder acting as a registered market maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, and must provide any information concerning trading in those accounts that the Exchange may request. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations to the extent the Exchange has such an agreement with an organization of which the subsidiary or affiliate is a member.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in an information bulletin (''Information Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IIV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of Bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of bitcoin futures contracts and options on bitcoin futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [22] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.500–E. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because the Fund is structured similarly to and will operate in materially the same manner as the Bitcoin ETPs previously approved by the Commission. The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulate acts and practices because, as noted by the Commission in the Bitcoin ETP Approval Order, the Exchange's ability to obtain information regarding trading in the Shares and futures from markets and other entities that are members of the ISG (including the CME and ICE Futures U.S.) or with which the Exchange has in place a CSSA would assist the Exchange in detecting and deterring misconduct.

The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect attempted manipulation of the Shares or other violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and bitcoin futures or the

[22] 15 U.S.C. 78f(b)(5).

underlying bitcoin through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Fund. The Fund's website will include (1) daily trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Fund's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Trust Units based on bitcoin and Carbon Credit Futures and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–27. 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–NYSEARCA–2024–27 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06336 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99780; File No. SR–Phlx–2024–13]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2, Sections 13 and 14 and Options 8, Section 24

March 20, 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 14, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2 Rules at Sections 13, and 14 and Options 8, Section 24.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Options 2 Rules related to Options Market Participants at Sections 13, and 14, and an Options 8 Rule related to Floor Trading at Section 24. Each change will be discussed below.

Options 2, Section 13

The Exchange proposes to amend Options 2, Section 13, Affiliated Persons of Lead Market Makers, which was previously Phlx Rule 1036[3] and titled ''Affiliated Persons of Specialists.'' SR–Phlx–2016–86[4] noted that Rule 1036(b) provided that ''no issuer, or parent or subsidiary thereof, or any officer, director or 10% stockholder thereof, may become an approved person in a specialist member organization whose members are registered in a security of that issuer.'' SR–Phlx–2020–03 also amended the term ''specialist'' to ''Lead Market Maker'' in multiple places in the Rulebook including Phlx Rule 1036. The Exchange notes that the term ''specialist'' within prior Rule 1036, which is now Options 2, Section 13, did not refer to a Phlx participant also known as a ''specialist,'' rather the term referred to an individual that engages in market making pursuant to the Act. The Exchange proposes to replace the term ''Lead Market Maker'' with the term ''specialist'' which shall mean, for purposes of this rule, an individual that engages in market making pursuant to the Act. The term ''specialist'' as utilized in the Act is broader than the term ''Lead Market Maker'' as described in the Exchange's rules.[5] This proposal reverts the rule text language back to its original term to capture the universe of market makers the rule was originally intended to capture.

Options 2, Section 14

The Exchange proposes to reserve Options 2, Section 14, Limitations on Options Market Making, which was previously Rule 175.[6] This rule was adopted in 2008[7] for XLE[8] to address the same person or firm making markets in an equity security and its related option (''integrated market making''). Phlx Rule 175 was adopted to prevent the potential misuse of non-public information on XLE. The Exchange discontinued XLE on October 24, 2008.[9] Phlx Rule 175 ceased to be operative on that date as the rule was an equity rule. The Exchange removed various XLE rules from the Rulebook and relocated other rules. Rule 175 was relocated in error into the options rules as part of a rule harmonization.[10] Rule 175 should have been deleted in 2008 when XLE was discontinued.

At this time, the Exchange proposes to remove Options 2, Section 14 which is not applicable to options trading.[11] General 9, Section 21(d) requires both options and equity members to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as specialist or market maker in any security underlying the options for which the Participant acts as a Market Maker.[12] With respect to equity trading, today, PSX Participants are subject to General 9, Section 21(d), which type of rule was found by the Commission to reduce the opportunity for unfair trading advantages.[13]

Options 8, Section 24

The Exchange proposes to amend Options 8, Section 24, Bids and Offers-Premium. This rule applies to the Exchange's Trading Floor. Specifically, the Exchange proposes to amend Options 8, Section 24(b) related to the solicitation of quotations. Currently, Options 8, Section 24 provides,

Solicitation of Quotations. In response to a floor broker's solicitation of a single bid or offer the members of a trading crowd (including the Lead Market Maker and Floor Market Makers) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the Exchange's disseminated size can be executed at that

[3] In 2020, the Exchange relocated Rule 1036 to Options 2, Section 13. See Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) (''SR–Phlx–2020–03'').

[4] *See* Securities Exchange Act Release No. 78680 (August 25, 2016), 81 FR 60110 (August 31, 2016) (SR–Phlx–2016–86) (Notice of Filing of Proposed Rule Change to Delete or Amend Outdated Rule Language) (''SR–Phlx–2016–86'').

[5] Pursuant to Options 1, Section 1(b)(27), a ''Lead Market Maker'' means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on the Exchange's Trading Floor and is approved by the Exchange pursuant to Options 2, Section 11.

[6] *See* SR–Phlx–2020–03 which relocated Rule 175.

[7] *See* Securities Exchange Act Release No. 57683 (April 18, 2008), 73 FR 22199 (April 24, 2008) (SR–Phlx–2008–27) (Notice of Filing of Proposed Rule Change Relating to Access to XLE on Phlx's Options Floor) (''SR–Phlx–2008–27'').

[8] Phlx's legacy electronic equity trading system.

[9] *See* Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR–Phlx–2008–65).

[10] *See* SR–Phlx–2020–03.

[11] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of Remote Market-Makers). Cboe addressed integrated market making in a rule change offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. In that filing, Cboe noted that Remote Market-Makers (''RMMs'') who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (*i.e.,* integrated market making). Cboe indicated its Rule 4.18, which governed the use of material, non-public information, would apply to RMMs. Cboe represented that Rule 4.18 would require RMMs to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as an RMM. The Commission noted in that rule change that it believed that the requirement that there be an information barrier between the RMM and its affiliates with respect to transactions in the option and the underlying security served to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

[12] *See also* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR–PCX–2002–36) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus). PCX addressed the Commission's concerns about integrated market making by adopting a rule that governed the use of material, non-public information that was applicable to members trading on PCX Plus.

[13] *See* General 9, Section 21.

time, or the number of contracts that could be executed at a given price or prices, subject to the provisions of the Options Order Protection and Locked/Crossed Market Plan and the Exchange's Rules respecting Trade-Throughs. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the Lead Market Maker and Floor Market Makers).

The Exchange proposes to amend Options 8, Section 24(b) to make clear that when a Floor Broker [14] enters a trading crowd for the purpose of soliciting a bid or offer, the Floor Broker must clearly and audibly indicate they are solicitating interest for the purposes of price discovery and not otherwise requesting a firm bid or offer which would then be executed. The Exchange believes that this amendment will make clear that a Floor Broker must distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation and would not result in a trade. The Exchange believes that the addition of this language will make clear to members on the trading floor the need to specify their intent when soliciting interest or they will otherwise be required to execute the trade.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, 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.

Options 2, Section 13

The Exchange's proposal to amend Options 2, Section 13 to revert the term ''Lead Market Maker'' to ''specialist'' is consistent with the Act and promotes just and equitable principles of trade because the intended term ''specialist'' pursuant to the Act is broader than the term ''Lead Market Maker'' and was intended to capture a broader array of market participants. This amendment will make clear that specialists must comply with the rule.

Options 2, Section 14

The Exchange's proposal to reserve Options 2, Section 14, Limitations on Options Market Making, is consistent with the Act and removes impediments to and perfect the mechanism of a free and open market because the rule is not applicable to options trading.[17] General 9, Section 21(d) requires both options and equity members to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as specialist or market maker in any security underlying the options for which the Participant acts as a Market Maker.[18] With respect to equity trading, today, PSX Participants are subject to General 9, Section 21(d), which type of rule was found by the Commission to reduce the opportunity for unfair trading advantages.[19]

Options 8, Section 24

The Exchange's proposal to amend Options 8, Section 24, Bids and Offers-Premium, is consistent with the Act as it clarifies the current rule text by requiring a Floor Broker to clearly and audibly indicate they are solicitating interest for the purpose of price discovery and not otherwise requesting a firm bid or offer. The amendment protects investors and the general public by requiring a Floor Broker to distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation and would not result in a trade. The Exchange believes that the addition of this language will make clear to members on the trading floor the need to specify their intent when soliciting interest or they will otherwise be required to execute the trade.

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.

Options 2, Section 13

The Exchange's proposal to amend Options 2, Section 13 to revert the term ''Lead Market Maker'' to ''specialist'' does not impose an undue burden on competition, rather the term makes clear that the rule was intended to apply to a ''specialist'' pursuant to the Act and not a ''Lead Market Maker'' as that term is described in the Exchange's rules. The term would apply uniformly to all specialists.

Options 2, Section 14

The Exchange's proposal to reserve Options 2, Section 14, Limitations on Options Market Making, does not impose an undue burden on competition because the rule would uniformly not apply to any member or member organization that transacts options or equities on the Exchange.

Options 8, Section 24

The Exchange's proposal to amend Options 8, Section 24, Bids and Offers-Premium, does not impose an undue burden on competition because it clarifies the current rule text by requiring all Floor Brokers to distinguish a solicitation of interest in the trading crowd so that a Floor Market Maker understands the response is in connection with a solicitation for purposes of price discovery and would not result in a trade.

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.

[14] The term ''Floor Broker'' means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. *See* Options 8, Section 2(a)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of Remote Market-Makers). Cboe addressed integrated market making in a rule change offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. In that filing, Cboe noted that Remote Market-Makers (''RMMs'') who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (*i.e.,* integrated market making). Cboe indicated its Rule 4.18, which governed the use of material, non-public information, would apply to RMMs. Cboe represented that Rule 4.18 would require RMMs to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as an RMM. The Commission noted in that rule change that it believed that the requirement that there be an information barrier between the RMM and its affiliates with respect to transactions in the option and the underlying security served to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

[18] *See also* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR–PCX–2002–36) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus). PCX addressed the Commission's concerns about integrated market making by adopting a rule that governed the use of material, non-public information that was applicable to members trading on PCX Plus.

[19] *See* General 9, Section 21.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

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–Phlx–2024–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2024–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–Phlx–2024–13 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 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 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.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99802; File No. SR–DTC–2024–003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

March 20, 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, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. 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. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change consists of amendments to the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies'').[3]

The proposed rule change would amend the Framework to (1) describe how the Clearing Agencies may solicit the views of their participants and other industry stakeholders, for example, in developing new services or risk management practices, and in evaluating existing products or risk management practices; (2) provide for the annual assessment and subsequent review of FICC's Government Securities Division (''GSD'') access models by FICC's Board of Directors (''FICC Board''), in compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C) under the Act; and (3) make other conforming and clean up changes to the Framework, as described in greater detail below.[4]

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

[3] *See* Securities Exchange Act Release Nos. 81635 (Sep. 15, 2017), 82 FR 44224 (Sep. 21, 2017) (SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing''), Securities Exchange Act Release No. 89271 (July 9, 2020), 85 FR 42933 (July 15, 2020) (SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 9, 2020), 85–42954 (July 15, 2020) (SR–DTC–2020–009); Securities Exchange Act Release No. 89270 (July 9, 2020), 85–42927 (July 15, 2020) (SR–FICC–2020–007); Securities Exchange Act Release No. 96799 (Feb. 03, 2023), 88 FR 8506 (Feb. 9, 2023) (SR–DTC–2023–001); Securities Exchange Act Release No. 96800 (Feb. 3, 2023), 88–8491 (Feb. 9, 2023) (SR–FICC–2023–001); Securities Exchange Act Release No. 96801 (Feb. 3, 2023), 88–8502 (Feb. 9, 2023) (SR–NSCC–2023–001); Securities Exchange Act Release No. 99097 (Dec. 6, 2023), 88–86186 (Dec. 12, 2023) (SR–FICC–2023–016); Securities Exchange Act Release No. 99098 (Dec. 6, 2023), 88–86183 (Dec. 12, 2023) (SR–NSCC–2023–012); and Securities Exchange Act Release No. 99108 (Dec. 07, 2023), 88 FR 86430 (Dec. 13, 2023) (SR–2023–DTC–012) (together with the Initial Filing, ''Framework Filings'').

[4] 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.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agency Risk Management Framework provides an outline for, among other things, how each of the Clearing Agencies comprehensively manages the risks, including the legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by it and, in this way, supports the Clearing Agencies' compliance with certain requirements of Rule 17Ad–22(e) under the Act, as described in the Framework Filings.[5]

The Clearing Agencies routinely solicit their participants' and other industry stakeholders' views when developing new products, services or risk management practices, and when evaluating existing products, services or risk management practices in order to continue to meet the industry's needs, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. Solicitation of industry views may be undertaken in a number of ways, including targeted outreach to firms expected to be impacted by a proposal to broader engagement with a stakeholder council that is assembled to consider issues relevant to a proposal.

Furthermore, the Commission recently adopted amendments to Rule 17Ad–22(e)(18)(iv)(C) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities. Rule 17Ad–22(e)(18)(iv)(C) requires that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[6] In connection with this requirement, FICC would conduct an annual assessment of its access models, which would include the solicitation of participant and other stakeholder views, prior to the FICC Board's review of those models. The proposed rule changes to the Framework would describe the scope of this annual assessment of GSD's access models and the FICC Board's subsequent review. These proposed changes would facilitate FICC's compliance with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[7]

Therefore, the proposed changes would amend the Framework to (i) describe the Clearing Agencies' solicitation of participant and stakeholder views in connection with their development and evaluation of products, services and risk management practices; (ii) describe the annual assessment of GSD's access models, which would include solicitation of participant and stakeholder views, and the subsequent annual review of those models by FICC's Board; and (iii) make other conforming and clean-up changes to the Framework, as discussed in further detail below.

i. Solicitation of Participant and Stakeholder Views

Currently, Section 3 of the Framework outlines the Clearing Agencies' risk management strategies for managing Key Clearing Agency Risks in compliance with Rule 17Ad–22(e)(3).[8] As noted above, the Clearing Agencies may, and regularly do, solicit the views of their participants and other industry stakeholders when, for example, developing new products, services or risk management measures, or when evaluating or making enhancements to existing products, services or risk management measures. This engagement can take many forms, including, for example, targeted outreach to firms that may be impacted by the matter being evaluated, wider solicitation of views through industry surveys, or through the engagement of a standing stakeholder council that has been established to advise on the matters related to the proposal.

The Clearing Agencies' consideration of these views supports its management of risks by ensuring that its activities continue to meet the needs of the industry its serves, consistent with their responsibility to provide sound risk management and comply with other applicable provisions of the Exchange Act. For example, participants and other stakeholders could identify any unintended impacts a proposal may have on their business models or practices and provide the Clearing Agencies with recommendations on how to meet the goal of a proposal through alternative approaches.

Therefore, the proposed changes would add Section 3.4 to the Framework to describe how the Clearing Agencies may solicit the views of participants and stakeholders. A subsection 3.4.1 would describe how such solicitation may occur generally, including, for example, through targeted outreach to specific participants impacted by a proposal, more widely distributed surveys, and ad hoc forums, as well as through the establishment of standing advisory councils made up of representatives of the participants and other stakeholders. This subsection would also identify the stakeholders that may participate in such councils, including, for example, representatives from transfer agents, liquidity providers, market infrastructures, institutional and retail investors, customers of the Clearing Agencies' participants, securities issuers, and securities holders. The proposed changes would provide general description of how the Clearing Agencies may solicit the views of participants and other industry stakeholders, but would not create an obligation for the Clearing Agencies to conduct such outreach in any particular circumstances.

ii. Annual Assessment and FICC Board Review of GSD's Access Models

Additionally, the proposed Section 3.4, in a subsection 3.4.2, would describe more specifically that an advisory council would assist in an annual review of GSD's access models. This assessment of GSD's access models would be required to be conducted annually by FICC and would precede an annual review of GSD's access models by the FICC Board, as required by Rule 17Ad–22(e)(18)(iv)(C).[9]

The annual review of GSD's access models would be designed to determine whether FICC continues to provide

[5] *See* supra note 3. As described in the Framework Filings, the Framework describes how the Clearing Agencies address their respective compliance with the requirements of Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23). 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

[6] *Supra* note 4.

[7] *Id.* Contemporaneous with this filing, FICC will file separate proposed rule changes to address other requirements applicable to it and adopted as part of the Treasury Clearing Rules.

[8] ''Key Clearing Agency Risks'' are defined in Section 3 of the Framework and include, ''legal, credit, liquidity, operational, general business, investment, custody, and other risks, that arise in or are borne by the Clearing Agencies.'' *Supra* note 3.

[9] *Supra* note 4. Contemporaneous with this filing, FICC will file a separate proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C).

appropriate and flexible means to facilitate access to clearance and settlement of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants, consistent with FICC's responsibility to provide sound risk management and comply with its applicable regulatory requirements. The proposed Section 3.4 of the Framework would further provide that the annual review would include the following, in furtherance of its goal: (1) document any instance in which FICC treats transactions differently and confirm that any variation in treatment is both necessary and appropriate; (2) consider whether to enable GSD's Netting Members to submit to eligible transactions for clearance and settlement that have been executed by two indirect participants of FICC/GSD (''done-away''); (3) consider the volumes and proportion of the markets that are being centrally cleared through different access models; and (4) consider whether it is appropriate to develop and propose an additional category or categories of Netting Members to the GSD Rules to reflect the types of legal entities that applied to be a Netting Member over the prior 12 months and did not fit into one of the existing Netting Member categories.

Engaging participants, their customers and other stakeholders in this annual review would facilitate FICC's ability to meet these goals. Participants and other stakeholders could, for example, assist in identifying ways the GSD access models may treat their, or their customers' transactions differently and in assessing whether such variation in treatment is both necessary and appropriate. A stakeholder council, which would include representatives of participants, their customers and as well as other industry stakeholders, could also provide FICC with information regarding their business models and how they, and their customers, use GSD's clearing services. Through this outreach, FICC could better understand the volumes and proportions of the markets that are being centrally cleared through different access models. Participant and stakeholder views obtained in the review of GSD's access models would be included in the annual review of those models by the FICC Board and, therefore, support FICC's compliance with Rule 17Ad–22(e)(18)(iv)(C) under the Act.[10]

As noted above, FICC is separately filing a proposed rule change to address the other requirements of Rule 17Ad–22(e)(18)(iv)(C), including changes that would provide a framework for FICC to consider an applicant, including a legal entity that is organized or established under the laws of a country other than the United States, to be a Netting Member if that applicant does not meet the eligibility criteria of one of the existing Netting Member categories. In connection with its annual review of the GSD access models, the proposed changes to the Framework would also require that FICC 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.

iii. Other Conforming and Clean Up Changes

The Clearing Agencies would also make conforming and other clean up changes to the Framework. These changes would include changes to the Executive Summary of the Framework in Section 1 to (1) include the annual review of GSD's access models, pursuant to Rule 17Ad–22(e)(18)(iv)(C) under the Act,[11] in the list of regulatory requirements that are addressed in the Framework; and (2) update the description of the contents of Section 3 of the Framework to include the solicitation of participant and stakeholder views and annual review of GSD's access models as part of the Clearing Agencies' management of risks.

The proposed changes would also remove the defined term ''Management Committee'' wherever referenced and replace it with ''senior management committee.'' The same internal management committee would maintain the responsibilities of the current Management Committee, as described in the Framework, but the proposed changes to remove the capitalized reference to this committee would allow the Framework to continue to be accurate notwithstanding any future changes to the name of this committee.

Other grammatical clean up changes would also be made to the Framework.

Implementation Timeframe

Subject to approval by the Commission, the Clearing Agencies expect 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 the Clearing Agencies' website.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(18)(iv)(C) under the Act,[13] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[14] The proposed changes would describe how the Clearing Agencies solicit the views of their participants and stakeholders in developing new, and evaluating existing, products, services and risk management practices. As described above, by soliciting these views, the Clearing Agencies would be able to identify, for example, any unintended consequences a proposal may have on its participants and obtain recommendations on how to meet its goals through alternative approaches. In this way, by managing the risk that a proposal could have an unintended consequences on participants, the proposed changes to describe the solicitation of participant and stakeholder views by the Clearing Agencies in developing proposals would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[15]

The proposed changes to make conforming and clean up changes to the Framework would ensure that the Framework is clear and accurate in describing the risk management functions of the Clearing Agencies. The risk management functions described in the Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. By improving the clarity and accuracy of the descriptions of risk management functions within the Framework, the proposed changes

[10] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[11] *Id.*

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[14] *Supra* note 12.

[15] *Id.*

would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(18)(iv)(C) under the Act requires, among other things, that the FICC Board annually review the policies and procedures that are reasonably 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, including those of indirect participants.[17] The proposed changes to the Framework would describe how GSD's access models would be assessed annually, including through the solicitation of feedback on such access models by a stakeholder council. The proposed changes would also describe the goals of the assessment and how those goals would be met. Finally, the proposed changes would provide that the assessment of GSD's access models be conducted prior to, and in support of, the annual review of those models by the FICC Board, as required by Rule 17Ad–22(e)(18)(iv)(C).[18] Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Rule 17Ad–22(e)(18)(iv)(C).[19]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework to describe the solicitation of participant and stakeholder views, and the annual review of the GSD's access models, would have any impact on competition. The proposed changes would describe an existing process by which the Clearing Agencies engage with their participants and other stakeholders regularly in connection with their evaluation of proposals and their assessment of existing practices. The proposed change would also describe how it would use various methods for soliciting feedback from different groups, which will facilitate its ability to solicit a wide range of views from different types of firms. Further, as described above, the goal of the annual assessment and review of GSD's access models is to ensure FICC offers appropriate means to facilitate access to GSD's clearing services, including those of indirect participants. By contributing to the development of access models that are designed to facilitate access to GSD's clearing services by a wider variety of market participants, the annual assessment and review of GSD's access models in the Framework would promote competition in the markets where GSD operates.

The Clearing Agencies do not believe the proposed rule changes to make conforming and clean up changes to the Framework would impact competition. These changes would ensure the clarity and accuracy of the descriptions of risk management functions in the Framework. They would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposal to make conforming and clean up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have 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 Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–DTC–2024–003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2024–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 DTC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[18] *Id.*

[19] *Id.*

protection. All submissions should refer to file number SR–DTC–2024–003 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06337 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99785; File No. SR–Phlx–2024–10]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 9

March 20, 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 7, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 its Rules at Options 7, Section 9, Other Member Fees.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 9, B, Port Fees, to increase the SQF Port [4] Fee cap.

Today, Phlx assesses $1,250 per port, per month up to a maximum of $42,000 per month for an SQF Port that receives inbound quotes at any time within that month.[5] Today, member organizations are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology.[6] The Exchange proposes to add the words ''active port'' in parenthesis at the end of the description of SQF Port Fee to tie the definition of an active port to the description for the port.[7]

At this time, the Exchange proposes to increase the maximum SQF Port Fee of $42,000 per month to $50,000 per month.[8] The Exchange is not amending the $1,250 per port, per month fee. As is the case today, the Exchange would not assess a member organization an SQF Port Fee beyond the monthly cap once the member organization has exceeded the monthly cap for the respective month.

Despite increasing the maximum SQF Port Fee from $42,000 per month to $50,000 per month, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed these fees beyond the cap.

Pursuant to Options 3, Section 7(a)(i)(B), Market Makers may only enter interest into SQF in their assigned options series. Pursuant to Options 3, Section 7(a)(i)(B), the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. A Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[9] only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–Phlx–2023–52) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–Phlx–2023–52 and replaced it with SR–Phlx–2023–56. On January 16, 2023, the Exchange withdrew SR–Phlx–2023–56 and submitted SR–Phlx–2024–02. On March 7, 2024, the Exchange withdrew SR–Phlx–2024–02 and submitted this filing.

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Lead Market Makers, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs'') to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively. *See* Options 3, Section 7(a)(i)(B).

[5] An active port shall mean that the port was utilized to submit a quote to the System during a given month. *See* Options 7, Section 9, B.

[6] The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. *See* Options 7, Section 9, B.

[7] The Exchange also proposes a technical amendment to add a comma between ''per port'' and ''per month'' for the SQF Port Fee in Options 7, Section 9, B.

[8] Currently, 29% of Phlx Market Makers cap their SQF Port Fees. Of those Market Makers, there is a mix of small, medium and large Market Makers.

[9] For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

[10] Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month is reasonable because despite the increase in the maximum SQF Port Fee, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed SQF Port Fees beyond the cap. Additionally, a Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[13] only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[14] Member organizations may choose a greater number of SQF Ports beyond one port, depending on that member organization's particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. Phlx must manage the security and message traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on Phlx has led the Exchange to select $50,000 as the amended monthly cap for SQF Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (''Cboe'') limits usage on each port and assesses fees for incremental usage.[15]

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $50,000 per month. Phlx believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, Phlx Market Makers may pay more to obtain multiple ports on Phlx. BOX Exchange LLC (''BOX'') assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[16] Miami International Securities Exchange, LLC's (''MIAX'') MIAX Express Interface (''MEI'') Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[17]

The number of ports that member organizations choose to purchase varies widely. Today, on Phlx, 2 Marker Makers have 1 SQF Port, 5 Market Makers have 2–5 SQF Ports, 4 Market Makers have between 6–10 SQF Ports, and 11 Market Makers have more than 10 SQF Ports. Additionally, today, on Nasdaq GEMX, LLC no Market Makers have 1 SQF Port/SQF Purge Port, 1 Market Maker has 2–5 SQF Ports/SQF Purge Ports, 4 Market Makers have between 6–10 SQF Ports/SQF Purge Ports, and 8 Market Makers have more than 10 SQF Ports/SQF Purge Ports. Finally, on Nasdaq MRX LLC (''MRX''), 2 Marker Makers have 1 SQF Ports/SQF Purge Ports, no Market Makers have 2–5 SQF Ports/SQF Purge Ports, 2 Market Makers have between 6–10 SQF Ports/SQF Purge Ports, and 6 Market Makers have more than 10 SQF Ports/SQF Purge Ports.

The proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only market participants that are permitted to quote on the Exchange. SQF Ports are only utilized in the Market Maker's assigned options series. The following chart represents the classification of Phlx members and the percentage of Market Makers.

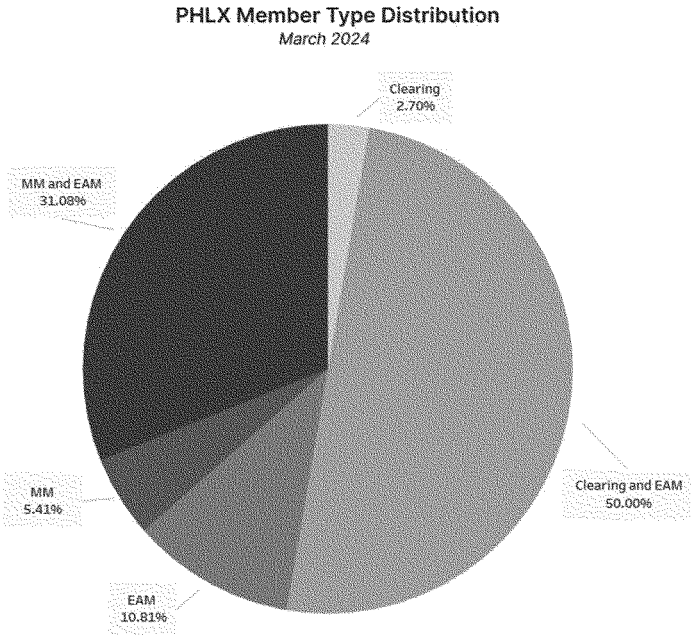
[13] For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

[14] Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

[15] Each Cboe Binary Order Entry (''BOE'') or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. *See* Cboe's Fees Schedule.

[16] *See* BOX's Fee Schedule.

[17] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.



Unlike other market participants, Market Makers are subject to market making and quoting obligations.[18] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[19] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[20] and Streaming Quote Trader Fees,[21] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to Phlx at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port fee cap is designed to continue to incent Market Makers to quote on Phlx, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[22] In that rule change,[23] NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[24]

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Ports fees is constrained by competitive forces and that its proposed modifications to the SQF Port Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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

[18] *See* Options 2, Sections 4 and 5.

[19] *See* Options 3, Section 8.

[20] *See* Options 7, Section 8, A.

[21] *See* Options 7, Section 8, B.

[22] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

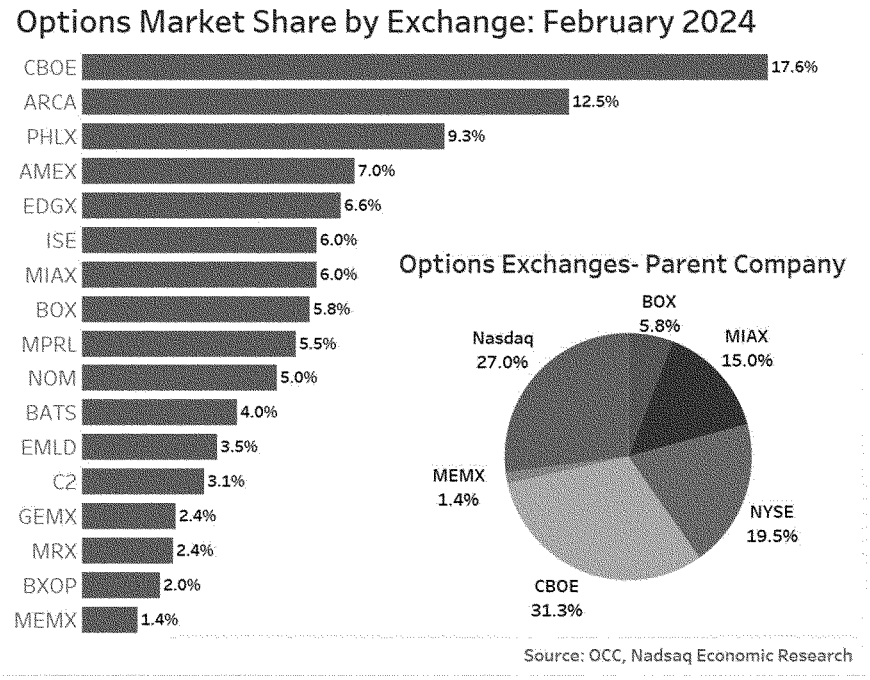
[23] *Id* at 38788.

[24] *Id* at 38790.

necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The chart below shows the February 2024 market share for multiply listed options by exchange. Of the 17 operating options exchanges, none currently has more than a 17.6% market share. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality.



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Other exchanges amended certain costs attributed to Market Makers.[25] In 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[26] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [27]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair Phlx's ability to compete among other options markets. Additionally, BOX assesses $1,000 per month for all SAIL Ports for Market Making and $500 per month per port up to 5 ports for order entry and $150 per month for each additional port.[28] MIAX's MEI Fee levels are based on a tiered fee structure based on the Market Maker's total monthly executed volume during the relevant month.[29]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair Phlx's ability to compete among other options markets.

Intramarket Competition

The Exchange's proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only

[25] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[26] *See* Securities Exchange Act No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[27] *Id* at 8976.

[28] *See* BOX's Fee Schedule.

[29] MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level. *See* MIAX's Fee Schedule.

market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[30] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[31] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[32] and Streaming Quote Trader Fees,[33] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to Phlx at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Fee cap is designed to continue to incent Market Makers to quote on Phlx, thereby promoting liquidity, quote competition, and trading opportunities.

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.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–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–Phlx–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–Phlx–2024–10 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06322 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Options 2, Sections 4 and 5.

[31] *See* Options 3, Section 8.

[32] *See* Options 7, Section 8, A.

[33] *See* Options 7, Section 8, B.

[34] 15 U.S.C. 78s(b)(3)(A)(ii).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99798; File No. SR–MRX–2024–09]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10 kW

March 20, 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 13, 2024, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW x $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than $3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–MRX–2024–05). The instant filing replaces SR–MRX–2024–05, which was withdrawn on March 13, 2024.

[4] On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99645 (February 29, 2024), 89 FR 16067 (March 6, 2024) (SR–MRX–2024–03).

[5] *See* Securities Exchange Act Release No. 34–62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019). In 2017, the Exchange synchronized its options for connecting to the Exchange with that of its sister exchanges and adopted uniform colocation services, including the Cabinet Proximity Option program. *See* Securities Exchange Act Release No. 34–81907 (October 19, 2017), 82 FR 49447 (October 25, 2017) (SR–MRX–2017–21).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. *See* SR–MRX–2024–04 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. *See* SR–MRX–2024–04 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–MRX–2024–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MRX–2024–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–MRX–2024–09 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06333 Filed 3–25–24; 8:45 am]

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[16] There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary*. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99788; File No. SR–ISE–2024–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Complex Order Rebates in the Exchange's Pricing Schedule at Options 7, Section 4

March 20, 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 8, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the complex order rebates in the Exchange's Pricing Schedule at Options 7, Section 4.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the complex order rebates in the Exchange's Pricing Schedule.[3] Today, as set forth in Options 7, Section 4, the Exchange offers tiered complex order Priority Customer[4] rebates for Select Symbols[5] and Non-Select Symbols[6] based on the Priority Customer Complex Tier achieved.[7] The tiered complex order Priority Customer rebates for Select Symbols and Non-Select Symbols are presently as follows:

Priority Customer Complex Tier	Total affiliated member or affiliated entity complex order volume (excluding crossing orders and responses to crossing orders) calculated as a percentage of customer total consolidated volume	Rebate for Select Symbols	Rebate for Non-Select Symbols
Tier 1	0.000–0.200	($0.25)	($0.50)
Tier 2	Above 0.200–0.400	(0.30)	(0.60)
Tier 3	Above 0.400–0.450	(0.35)	(0.75)
Tier 4	Above 0.450–0.750	(0.40)	(0.80)
Tier 5	Above 0.750–1.000	(0.45)	(0.85)
Tier 6	Above 1.000–1.350	(0.48)	(0.95)
Tier 7	Above 1.350–1.750	(0.54)	(1.00)
Tier 8	Above 1.750–2.750	(0.55)	(1.10)
Tier 9	Above 2.750–4.500	(0.56)	(1.12)
Tier 10	Above 4.500	(0.57)	(1.15)

The above rebates are provided per contract per leg if the order trades with Non-Priority Customer[8] orders in the complex order book.

The Exchange now proposes to modify Priority Customer Complex Tiers 3–5 in the following manner:

Priority Customer ComplexTier	Total affiliated member or affiliated entity complex order volume (excluding crossing orders and responses to crossing orders) calculated as a percentage of customer total consolidated volume	Rebate for Select Symbols	Rebate for Non-Select Symbols
Tier 3	Above 0.400–0.550	($0.40)	($0.80)
Tier 4	Above 0.550–0.750	(0.45)	(0.85)
Tier 5	Above 0.750–1.000	(0.46)	(0.90)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on February 29, 2024 with an operative date of March 1, 2024 (SR–ISE–2024–08). On March 8, 2024, the Exchange withdrew that filing and replaced it with this filing.

[4] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

[5] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

[6] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[7] Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. *See* Options 7, Section 4, note 16. As set forth in Options 7, Section 1(c), an Appointed OFP is an Order Flow Provider who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

[8] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers.

As amended, the rebates for Tiers 3–5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. While the Exchange is increasing the volume qualifications in this manner, the Exchange is simultaneously increasing the related rebates such that Members who would fall within the 0.45% to 0.55% volume threshold range would receive the same rebate under this proposal as they would today (*i.e.,* $0.40 for Select Symbols and $0.80 for Non-Select Symbols). Accordingly, the Exchange expects that there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* 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'. . ..'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 discussed above are reasonable because they are designed to attract more complex order flow to ISE to the benefit of all market participants. As discussed above, the rebates for Tiers 3–5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. As discussed above, the Exchange expects there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change because they would receive the same rebates under this proposal as they would today (*i.e.,* $0.40 for Select Symbols and $0.80 for Non-Select Symbols). The Exchange also believes that overall, all Members in Tiers 3 and 4 will benefit from the proposed rebates and that these rebates will continue to incentivize Members to send more complex order flow to ISE. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

The Exchange believes that offering the complex order Priority Customer rebate program, as modified, to only Priority Customers is equitable and not unfairly discriminatory as the proposed changes are intended to increase Priority Customer complex order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

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. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes to the complex rebates described above apply directly to Priority Customers, the Exchange believes that the changes will ultimately fortify and encourage activity on the Exchange to the extent the proposed changes incentivize increased Priority Customer complex order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *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–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2024–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–ISE–2024–11 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06325 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99814; File No. SR–PEARL–2024–13]

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 for Purge Ports

March 20, 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 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Pearl Options Exchange Fee Schedule (the ''Fee Schedule'') to amend fees for MIAX Express Network (''MEO'') [3] Purge Ports (''Purge Ports'').[4]

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

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 fees for Purge Ports, which is a function enabling the Exchange's two types of Members,[5] Market Makers [6] and Electronic Exchange Members [7] (''EEMs''), to cancel all open orders or a subset of open orders through a single cancel message. The Exchange currently provides Members the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Members with the ability to send purge messages to the Exchange System.[8] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange initially filed the proposal on September 29, 2023 (the ''Initial Proposal'').[9] On November 22, 2023, the Exchange withdrew the Initial Proposal and replaced with a revised filing (the ''Second Proposal'').[10] On January 17, 2024, the Exchange withdrew the Second Proposal and, on January 31, 2024, replaced it with a further revised filing (the ''Third Proposal'').[11] On March 8, 2024, the Exchange withdrew the Third Proposal and replaced it with this further revised filing (the ''Fourth Proposal'').

The Exchange is including a cost analysis in this filing to justify the proposed fees. As described more fully below, the cost analysis includes, among other things, descriptions of how the Exchange allocated costs among it and its affiliated exchanges for similar proposed fee changes (separately between MIAX [12] and MIAX Emerald,[13] collectively referred to herein as the ''affiliated markets''), to ensure no cost was allocated more than once, as well as 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 similar proposals submitted by the affiliated markets. The proposed fees are intended to cover the Exchange's cost of providing Purge Ports with a reasonable mark-up over those costs.

Purge Port Fee Change

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,[14] the Exchange assesses a flat fee of $750 per month, regardless of the number of Purge Ports utilized by a Market Maker. Prior to the Initial Proposal, a Market Maker could request and be allocated two (2) Purge Ports per Matching Engine [15] to which it connects and not all Members connected to all of the Exchange's Matching Engines.

The Exchange now proposes to amend the fee for Purge Ports to align more closely with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of $600 per month per Matching Engine. The only difference with a per port structure is that Members receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than being charged a separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its System architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee is lower than the comparable fee charged by competing exchanges that also charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same lower fee.[16]

Similar to a per port charge, Members are able to select the Matching Engines that they want to connect to,[17] based on the business needs of each Market Maker, and pay the applicable fee based on the number of Matching Engines and ports utilized. The Exchange believes that the proposed fee provides Members with flexibility to control their Purge Port costs based on the number of Matching Engines each Marker Maker elects to connect to based on each Market Maker's business needs.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Members [18] in the management of, and risk control over, their orders, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their orders, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all orders in a number of securities. This allows Members to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Members that conduct business activity that exposes them to a large amount of

[5] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] The term ''Market Maker'' or ''MM'' 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 the Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[7] 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.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] *See* Securities Exchange Act Release No. 98733 (October 12, 2023), 88 FR 71907 (October 18, 2023) (SR–PEARL–2023–52).

[10] *See* Securities Exchange Act Release No. 99090 (December 5, 2023), 88 FR 86193 (December 12, 2023) (SR–PEARL–2023–65).

[11] *See* Securities Exchange Act Release No. 99527 (February 13, 2024), 89 FR 1282 (February 20, 2024) (SR–PEARL–2024–07).

[12] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[13] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[14] *See* Cboe BZX Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). *See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. *See also* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[15] A Matching Engine is a part of the Exchange's 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* the Definitions Section of the Fee Schedule.

[16] *See supra* note 14.

[17] The Exchange notes that each Matching Engine corresponds to a specified group of symbols. Certain Market Makers choose to only quote in certain symbols while other Market Makers choose to quote the entire market.

[18] Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

risk across a number of securities. Purge Ports enable Members to cancel all open orders, or a subset of open orders through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of orders.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel orders at high rates. Members may currently cancel individual orders through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.[19] Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Members can currently cancel orders in rapid succession across their existing logical ports[20] or through a single cancel message, all open orders or a subset of open orders.

Similarly, Members may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all orders, as configured or instructed by the Member or Market Maker.[21] In addition, the Exchange already provides similar ability to mass cancel orders through the Exchange's risk controls, which are offered at no charge and enables Members to establish pre-determined levels of risk exposure, and can be used to cancel all open orders.[22] Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Member's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Members and to the market as a whole. Members will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Members may use Purge Ports to manage their risk more robustly. Only Members that request Purge Ports would be subject to the proposed fees, and other Members can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fee change is immediately effective

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with Section 6(b)(4) of the Act[25] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

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 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,[26] and Rule 19b–4 thereunder,[27] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[28] which requires, among other things, that exchange fees be reasonable and equitably allocated,[29] not designed to permit unfair discrimination,[30] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[31] 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 Staff Guidance.[32]

As detailed below, the Exchange recently calculated its aggregate annual costs for providing Purge Ports to be $1,017,523 (or approximately $84,793 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing Purge Ports to its Market Makers going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $300 per Matching Engine for Purge Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[33] 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 and purge 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''). The Exchange recently

[19] *See* Exchange Rule 519C(a) and (b).

[20] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancelation rates.

[21] *See* Exchange Rule 519C(c).

[22] *See* Exchange Rule 532.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78s(b)(1).

[27] 17 CFR 240.19b–4.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(8).

[32] *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'').

[33] 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.

update its Cost Analysis using its 2024 estimated budget as described below.

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,[34] 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.

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 Purge Port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to Purge 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 Purge Port services is $84,793, as further detailed below.

Costs Related To Offering Purge Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Purge Ports 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 3.5% of its overall Human Resources cost to offering Purge Ports).

[34] 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.

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% of all
Human Resources	$776,560	$64,713	3.5
Connectivity (external fees, cabling, switches, etc.)	521	43	0.6
Internet Services and External Market Data	2,949	246	0.6
Data Center	21,359	1,780	1.4
Hardware and Software Maintenance and Licenses	11,069	922	0.6
Depreciation	67,682	5,640	1.7
Allocated Shared Expenses	137,383	11,449	1.5
Total	1,017,523	84,793	2.6

[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 Purge 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 Purge 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.

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 Purge Ports and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide port and connectivity services). 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 port services. From that portion allocated to the Exchange that applied to ports, the Exchange then allocated a weighted average of 5.4% of each employee's time from the above group to Purge Ports.

The Exchange also allocated Human Resources costs to provide Purge Ports to a limited subset of personnel with ancillary functions related to establishing and maintaining such ports (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 Purge Ports) and then applied a smaller allocation to such employees' time to Purge Ports (2.4%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to Purge Ports, whether it is a sales person selling port services, finance personnel billing for port services or providing budget analysis, or information security ensuring that such ports are 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 Purge Ports, 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 Purge Ports: 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 5.4% of each of their employee's time assigned to the Exchange for Purge Ports, as stated above. Employees from these departments perform numerous functions to support Purge Ports, such as the installation, re-location, configuration, and maintenance of Purge Ports 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 Purge Ports 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 Purge Ports, 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 Purge Ports related

Human Resources costs to the extent that they are involved in overseeing tasks related to providing Purge Ports. 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 vendors 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 which includes Purge Ports. 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, including Purge Ports. In addition, the connectivity is necessary for the Exchange to notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Also, like other types of ports offered by the Exchange, Purge Ports leverage the Exchange's existing 10Gb ULL connectivity, which also relies on connectivity to other national securities exchanges and OPRA. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for Purge Ports.

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 Purge 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 OPRA, to receive and consume market data from other markets. The Exchange includes external market data costs towards Purge Ports because such market data is necessary to offer certain services related to such ports, such as checking for market conditions (*e.g.,* halted securities). External market data is also consumed at the Matching Engine level for, among other things, as validating quotes on entry against the national best bid or offer (''NBBO'').[35] Purge Ports are a component of the Matching Engine, and used by market participants to cancel multiple resting quotes within the Matching Engine. While resting, the Exchange uses external market data to manage those quotes, such as preventing trade-throughs, and those quotes are also reported to OPRA for inclusion in this consolidated data stream. The Exchange also must notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Thus, since market data from other exchanges is consumed by the Matching Engine to validate quotes and check market conditions, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports.

For the reasons set forth above, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports since market data from other exchanges is consumed at the Exchange's Purge Port level to validate purge messages and the necessity to cancel a resting quote via a purge message or via some other means.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Purge 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. 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. The Exchange has allocated a percentage of its Data Center cost (1.4%) to Purge Ports because the third-party data centers and the Exchange's physical equipment contained therein are necessary for providing Purge Ports. In other words, for the Exchange to operate in a dedicated physical space with direct connectivity by market participants to its trading platform, the data centers are a critical component to the provision of Purge Ports. If the Exchange did not maintain such a presence, then Purge Ports would be of little 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 Purge Ports for each Matching Engine of the Exchange. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Without hardware and software licenses, Purge Ports would not be able to be offered to market participants because hardware and software are necessary to operate the Exchange's Matching Engines, which are necessary to enable the purging of quotes. The Exchange also routinely works to improve the performance of the hardware and software used to operate the Exchange's network and System. 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 allocate a certain percentage of its hardware and software expense to help offset those costs of providing Purge Port connectivity to its Matching Engines.

Depreciation

The vast majority of the software the Exchange uses to provide 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

[35] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

environment. Hardware used to provide Purge 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 1.9% of all depreciation costs to providing Purge Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Purge 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 Purge Ports.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Purge Port costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Purge 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 3% of the overall cost for directors was allocated to providing Purge Ports.

Approximate Cost for Purge Port per Month

Based on projected 2024 data, the total monthly cost allocated to Purge Ports of $84,793 was divided by the total number of Matching Engines in which Market Makers used Purge Ports for the month of December 2023, which was 142, resulting in an approximate cost of $597 per Matching Engine per month for Purge Port usage (when rounding to the nearest dollar). The Exchange notes that the flat fee of $600 per month per Matching Engine entitles each Market Maker to two Purge Ports per Matching Engine. The majority of Market Makers are connected to all twenty-four of the Exchange's Matching Engines and utilize Purge Ports on each Matching Engine, except one Market Maker, which only utilizes Purge Ports on three Matching Engines.

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 Purge 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. For instance, in calculating the Human Resources expenses to be allocated to Purge Ports 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 higher percentage of the cost of such personnel (19.3%) given their focus on functions necessary to provide Ports. The salaries of those same personnel were allocated only 5.4% to Purge Ports and the remaining 94.6% was allocated to connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing Purge Ports to any other employee group, outside of a smaller allocation of 2.4% for Purge Ports, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Purge Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 3.5% of its personnel costs to providing Purge Ports. In turn, the Exchange allocated the remaining 96.5% of its Human Resources expense to membership services, transaction services, connectivity 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 Purge 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 Purge Port services to its Market Makers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing Purge Port services, but instead allocated approximately 1.7% of the Exchange's overall depreciation and amortization expense to Purge Ports. The Exchange allocated the remaining depreciation and amortization expense (approximately 98.3%) toward the cost of providing transaction services, membership services, connectivity 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 Purge Ports, the Exchange will have to be successful in retaining existing Market Makers that wish to maintain Purge Ports or in obtaining new Market Makers 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 port 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 [36]

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 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 Purge Port services. Subscribers, particularly those of Purge Ports, 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. 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 (connections and ports), 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 Purge Port services will equal $1,017,523. Based on current Purge Port services usage, the Exchange would generate annual revenue of approximately $1,029,600. The Exchange believes this represents a modest profit of 1.2% when compared to the cost of providing Purge Port services, which could decrease over time.[37]

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 Purge Port services versus the total projected revenue of the Exchange associated with network Purge Port services.

The Proposed Fees Are Also Equitable, Reasonable, and Not Unfairly Discriminatory

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Members optional Purge Port services with a flexible fee structure promotes choice, flexibility, and efficiency. The Exchange believes Purge Ports enhance Members' ability to manage orders, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry orders and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Members' resources. The Exchange believes that proper risk management, including the ability to efficiently cancel multiple orders quickly when necessary is valuable to all firms, including Members that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Members of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.[38] Specifically, any interest that is executable against a Member's or Market Maker's orders that is received by the Exchange prior to the time of the removal of orders request will automatically execute. Members that purge their orders will not be relieved of the obligation to provide continuous two- sided orders on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.[39]

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality in their trading systems that permit the flexible cancellation of orders entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

The Exchange also believes that moving to a per Matching Engine fee for Purge Ports is reasonable due to the Exchange's architecture that provides the Exchange the ability to provide two (2) Purge Ports per Matching Engine.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

[36] For purposes of calculating projected 2024 revenue for Purge Ports, the Exchange used revenues for the most recently completed full month.

[37] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited January 18, 2024).

[38] *See* Exchange Rule 604. *See also generally* Chapter VI of the Exchange's Rules.

[39] *Id.*

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Members that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Members that voluntarily select this service option will be charged the same amount for the same services. All Members have the option to select any port or connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Members on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Members can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Member is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower cost, adversely impacting the overall trading on the Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between Members. The proposal would allow any interested Members to purchase Purge Port functionality based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal, both from the same commenter.[40] These comment letters were submitted not only on these proposals, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain other ports. The Exchange received one other comment letter on the Second Proposal and another on the Third Proposal from a separate commenter.[41] Overall, the Exchange believes that the issues raised by the first commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, both commenters raised concerns 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. However, the commenters do raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough response to this comment would require the Exchange to obtain competitively sensitive information about other exchanges' architecture and how their members connect. The Exchange is not privy to this information. Further, the commenters compare the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge functionality as proposed herein. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchange's entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

[40] *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.

[41] *See* letters from John C. Pickford, Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated January 4, 2024 and March 1, 2024.

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,[42] and Rule 19b–4(f)(2)[43] 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–2024–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 240.19b–4(f)(2).

All submissions should refer to file number SR–PEARL–2024–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2024–13 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06349 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99813; File No. SR–MIAX–2024–14]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule for Purge Ports

March 20, 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 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'') to amend fees for Purge Ports.[3]

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 fees for Purge Ports, which is a function enabling Market Makers[4] to cancel all open quotes or a subset of open quotes through a single cancel message. The Exchange currently provides Market Makers the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send purge messages to the Exchange System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange initially filed the proposal on September 29, 2023 (the ''Initial Proposal'').[6] On November 22, 2023, the Exchange withdrew the Initial Proposal and replaced with a revised filing (the ''Second Proposal'').[7] On January 17, 2024, the Exchange withdrew the Second Proposal and, on January 31, 2024, replaced it with a further revised filing (the ''Third Proposal'').[8] On March 8, 2024, the Exchange withdrew the Third Proposal and replaced it with this further revised filing (the ''Fourth Proposal'').

The Exchange is including a cost analysis in this filing to justify the proposed fees. As described more fully below, the cost analysis includes, among other things, descriptions of how the Exchange allocated costs among it and its affiliated exchanges for similar proposed fee changes (separately between MIAX Pearl Options[9] and MIAX Emerald,[10] collectively referred to herein as the ''affiliated markets''), to ensure no cost was allocated more than once, as well as 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 similar proposals submitted by the affiliated markets. The proposed fees are intended to cover the Exchange's cost of providing Purge Ports with a reasonable mark-up over those costs.

Purge Port Fee Change

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,[11] the Exchange assesses a flat fee

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 98732 (October 12, 2023), 88 FR 71913 (October 18, 2023) (SR–MIAX–2023–37).

[7] *See* Securities Exchange Act Release No. 99088 (December 5, 2023), 88 FR 85958 (December 11, 2023) (SR–MIAX–2023–43).

[8] *See* Securities Exchange Act Release No. 99526 (February 13, 2024), 89 FR 12898 (February 20, 2024) (SR–MIAX–2024–07).

[9] MIAX Pearl Options is the options market of MIAX PEARL, LLC (''MIAX Pearl''), which also operates an equities trading facility called MIAX Pearl Equities. *See* Exchange Rule 100 and MIAX Pearl Rule 1901.

[10] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[11] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per

of $1,500 per month, regardless of the number of Purge Ports utilized by a Market Maker. Prior to the Initial Proposal, a Market Maker could request and be allocated two (2) Purge Ports per Matching Engine [12] to which it connects and not all Market Makers connected to all of the Exchange's Matching Engines.

The Exchange now proposes to amend the fee for Purge Ports to align more closely with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of $300 per month per Matching Engine. The only difference with a per port structure is that Market Makers receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than being charged a separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its System architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee is lower than the comparable fee charged by competing exchanges that also charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same lower fee.[13]

Similar to a per port charge, Market Makers are able to select the Matching Engines that they want to connect to,[14] based on the business needs of each Market Maker, and pay the applicable fee based on the number of Matching Engines and ports utilized. The Exchange believes that the proposed fee provides Market Makers with flexibility to control their Purge Port costs based on the number of Matching Engines each Marker Maker elects to connect to based on each Market Maker's business needs.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member [15] the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers [16] in the management of, and risk control over, their quotes, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their quotes, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open quotes, or a subset of open quotes through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of quotes.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel quotes at high rates. Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.[17] Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Market Makers can currently cancel quotes in rapid succession across their existing logical ports [18] or through a single cancel message, all open quotes or a subset of open quotes.

Similarly, Market Makers may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all quotes, as configured or instructed by the Member or Market Maker.[19] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge and enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[20] Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Market Maker's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Market Makers and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fee change is immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with Section 6(b)(4) of the

purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). *See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. *See also* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[12] 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), note 29.

[13] *See supra* note 11.

[14] The Exchange notes that each Matching Engine corresponds to a specified group of symbols. Certain Market Makers choose to only quote in certain symbols while other Market Makers choose to quote the entire market.

[15] 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.

[16] Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

[17] *See* Exchange Rule 519C(a) and (b).

[18] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancelation rates.

[19] *See* Exchange Rule 519C(c).

[20] *See* Exchange Rule 532.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

Act [23] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

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 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,[24] and Rule 19b–4 thereunder,[25] with respect to the types of information exchanges should provide when filing fee changes, and Section 6(b) of the Act,[26] which requires, among other things, that exchange fees be reasonable and equitably allocated,[27] not designed to permit unfair discrimination,[28] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[29] 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. The Exchange notes 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 Staff Guidance.[30]

As detailed below, the Exchange recently calculated its aggregate annual costs for providing Purge Ports to be $910,413 (or approximately $75,868 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing Purge Ports to its Market Makers going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $300 per Matching Engine for Purge Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[31] 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 and purge 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''). The Exchange recently update its Cost Analysis using its 2024 estimated budget as described below.

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,[32] 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

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78s(b)(1).

[25] 17 CFR 240.19b–4.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] *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'').*

[31] 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.

[32] 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.

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.

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 Purge Port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to Purge 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 Purge Port services is $75,868, as further detailed below.

Costs Related to Offering Purge Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Purge Ports 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 2.2% of its overall Human Resources cost to offering Purge Ports).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% of all
Human Resources	$492,357	$41,030	2.2
Connectivity (external fees, cabling, switches, etc.)	1,036	86	1.1
Internet Services and External Market Data	16,081	1,340	2.1
Data Center	31,102	2,592	2.1
Hardware and Software Maintenance and Licenses	42,539	3,545	2.1
Depreciation	82,610	6,884	1.9
Allocated Shared Expenses	244,688	20,391	2.8
Total	910,413	75,868	2.3

[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 Purge 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 Purge 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.

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 Purge Ports and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide port and connectivity services). 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 port services. From that portion allocated to the Exchange that applied to ports, the Exchange then allocated a weighted average of 2.7% of each employee's time from the above group to Purge Ports.

The Exchange also allocated Human Resources costs to provide Purge Ports to a limited subset of personnel with ancillary functions related to establishing and maintaining such ports (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 Purge Ports) and then applied a smaller allocation to such employees' time to Purge Ports (1.2%). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to Purge Ports, whether it is a sales person selling port services, finance personnel billing for port services or providing budget analysis, or information security ensuring that such ports are 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 Purge Ports, 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 Purge Ports: 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 2.7% of each of their employee's time assigned to the Exchange for Purge Ports, as stated above. Employees from these departments perform numerous functions to support Purge Ports, such as the installation, re-location, configuration, and maintenance of Purge Ports 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 Purge Ports 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 Purge Ports, 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 Purge Ports related Human Resources costs to the extent that they are involved in overseeing tasks related to providing Purge Ports. 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 vendors 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 which includes Purge Ports. 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, including Purge Ports. In addition, the connectivity is necessary for the Exchange to notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Also, like other types of ports offered by the Exchange, Purge Ports leverage the Exchange's existing 10Gb ULL connectivity, which also relies on connectivity to other national securities exchanges and OPRA. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for Purge Ports.

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 Purge 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 OPRA, to receive and consume market data from other markets. The Exchange includes external market data costs towards Purge Ports because such market data is necessary to offer certain services related to such ports, such as checking for market conditions (*e.g.,* halted securities). External market data is also consumed at the Matching Engine level for, among other things, as validating quotes on entry against the national best bid or offer (''NBBO'').[33] Purge Ports are a component of the Matching Engine, and used by market participants to cancel multiple resting quotes within the Matching Engine. While resting, the Exchange uses external market data to manage those quotes, such as preventing trade-throughs, and those quotes are also reported to OPRA for inclusion in this consolidated data stream. The Exchange also must notify OPRA and other market participants that an order has been cancelled, and that quotes may have been cancelled as a result of a Member purging quotes via their Purge Port. Thus, since market data from other exchanges is consumed by the Matching Engine to validate quotes and check market conditions, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports.

For the reasons set forth above, the Exchange believes it is reasonable to allocate a small amount of such costs to Purge Ports since market data from other exchanges is consumed at the Exchange's Purge Port level to validate purge messages and the necessity to cancel a resting quote via a purge message or via some other means.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide Purge 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. 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. The Exchange has allocated a percentage of its Data Center cost (2.1%) to Purge Ports because the third-party data centers and the Exchange's physical equipment contained therein are necessary for providing Purge Ports. In other words, for the Exchange to operate in a dedicated physical space with direct connectivity by market participants to its trading platform, the data centers are a critical component to the provision of Purge Ports. If the Exchange did not maintain such a presence, then Purge Ports would be of little 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 Purge Ports for each Matching Engine of the Exchange. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Without hardware and software licenses, Purge Ports would not be able to be offered to market participants because hardware and software are necessary to operate the Exchange's Matching Engines, which are necessary to enable the purging of quotes. The Exchange also routinely works to improve the performance of the hardware and software used to operate the Exchange's network and System. 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 allocate a certain percentage of its hardware and software expense to help offset those costs of providing Purge Port connectivity to its Matching Engines.

Depreciation

The vast majority of the software the Exchange uses to provide 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 Purge 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 1.9% of all depreciation costs to providing Purge Ports. The Exchange allocated depreciation costs for depreciated software necessary to operate the Exchange because such software is related to the provision of Purge 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 Purge Ports.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall Purge Port costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Purge 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 3% of the overall cost for directors was allocated to providing Purge Ports.

Approximate Cost for Purge Ports per Month

Based on projected 2024 data, the total monthly cost allocated to Purge Ports of $75,868 was divided by the total number of Matching Engines in which Market Makers used Purge Ports for the month of December 2023, which was 291, resulting in an approximate cost of $261 per Matching Engine per month for Purge Port usage (when rounding to the nearest dollar). The Exchange notes that the flat fee of $300 per month per Matching Engine entitles each Market Maker to two Purge Ports per Matching Engine. The majority of Market Makers are connected to all twenty-four of the Exchange's Matching Engines and utilize Purge Ports on each Matching Engine, except one Market Maker, which only utilizes Purge Ports on three Matching Engines.

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 Purge Ports) and did not

[33] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

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. For instance, in calculating the Human Resources expenses to be allocated to Purge Ports 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 higher percentage of the cost of such personnel (19.6%) given their focus on functions necessary to provide Ports. The salaries of those same personnel were allocated only 2.7 to Purge Ports and the remaining 97.3% was allocated to connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing Purge Ports to any other employee group, outside of a smaller allocation of 1.2% for Purge Ports, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Purge Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 2.2% of its personnel costs to providing Purge Ports. In turn, the Exchange allocated the remaining 97.8% of its Human Resources expense to membership services, transaction services, connectivity 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 Purge 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 Purge Port services to its Market Makers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing Purge Port services, but instead allocated approximately 1.9% of the Exchange's overall depreciation and amortization expense to Purge Ports. The Exchange allocated the remaining depreciation and amortization expense (approximately 98.1%) toward the cost of providing transaction services, membership services, connectivity 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 Purge Ports, the Exchange will have to be successful in retaining existing Market Makers that wish to maintain Purge Ports or in obtaining new Market Makers 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 port 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 [34]

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 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 Purge Port services. Subscribers, particularly those of Purge Ports, 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. 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 (connections and ports), 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

[34] For purposes of calculating projected 2024 revenue for Purge Ports, the Exchange used revenues for the most recently completed full month.

Purge Port services will equal $910,413. Based on current Purge Port services usage, the Exchange would generate annual revenue of approximately $1,047,600. The Exchange believes this represents a modest profit of 13.1% when compared to the cost of providing Purge Port services, which could decrease over time.[35]

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 Purge Port services versus the total projected revenue of the Exchange associated with network Purge Port services.

The Proposed Fees Are Also Equitable, Reasonable, and Not Unfairly Discriminatory

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional Purge Port services with a flexible fee structure promotes choice, flexibility, and efficiency. The Exchange believes Purge Ports enhance Market Makers' ability to manage quotes, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. The Exchange believes that proper risk management, including the ability to efficiently cancel multiple quotes quickly when necessary is valuable to all firms, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.[36] Specifically, any interest that is executable against a Member's or Market Maker's quotes that is received by the Exchange prior to the time of the removal of quotes request will automatically execute. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.[37]

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality in their trading systems that permit the flexible cancellation of quotes entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality. The Exchange also believes that moving to a per Matching Engine fee for Purge Ports is reasonable due to the Exchange's architecture that provides the Exchange the ability to provide two (2) Purge Ports per Matching Engine.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select this service option will be charged the same amount for the same services. All Market Makers have the option to select any port or connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Maker is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower cost, adversely impacting the overall trading on the Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not

[35] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited January 18, 2024).

[36] *See* Exchange Rule 604. *See also generally* Chapter VI of the Exchange's Rules.

[37] *Id.*

differentiate between Market Makers. The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal, both from the same commenter.[38] These comment letters were submitted not only on these proposals, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain other ports. The Exchange received one other comment letter on the Second Proposal and another on the Third Proposal from a separate commenter.[39] Overall, the Exchange believes that the issues raised by the first commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, both commenters raised concerns 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. However, the commenters do raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough response to this comment would require the Exchange to obtain competitively sensitive information about other exchanges' architecture and how their members connect. The Exchange is not privy to this information. Further, the commenters compare the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge functionality as proposed herein. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchange's entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

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,[40] and Rule 19b–4(f)(2)[41] 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–2024–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–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–MIAX–2024–14 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06348 Filed 3–25–24; 8:45 am]

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[38] *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.

[39] *See* letters from John C. Pickford, Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated January 4, 2024 and March 1, 2024.

[40] 15 U.S.C. 78s(b)(3)(A)(ii).

[41] 17 CFR 240.19b–4(f)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99797; File No. SR–Phlx–2024–12]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 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 13, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW x $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than $3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–Phlx–2024–09). The instant filing replaces SR–Phlx–2024–09, which was withdrawn on March 13, 2024.

[4] On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99644 (February 29, 2024), 89 FR 16069 (March 6, 2024) (SR–Phlx–2024–06).

[5] *See* Securities Exchange Act Release No. 34–62395 (June 28, 2010), 75 FR 38584 (July 2, 2010)(SR–Phlx–2010–18).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. See SR–Phlx–2024–08 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. See SR–Phlx–2024–08 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–Phlx–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–Phlx–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,

[16] There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqbtrader.com/Trader.aspx?id=OptionsVolumeSummary*. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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–Phlx–2024–12 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06332 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99808; File No. SR–NYSEARCA–2024–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 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 8, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users[4] with wireless connectivity to MEMX LLC (''MEMX'') market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the ''Existing Third Party Data''),[5] and wired connections to more than 45 market data feeds or combinations of feeds.[6] The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed[7] (''MEMX Data'' and, together with the Existing Third Party Data, the ''Third Party Data''). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (''MDC'').[8]

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange's proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, ''[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.''[9]

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (''Single Port Third Party Data''), it would not receive an additional port for the MEMX Data, as one would not be needed.[10] Rather, the User would be

[18] 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] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–15, SR–NYSEAMER–2024–18, SR–NYSECHX–2024–11, and SR–NYSENAT–2024–09.

[5] *See* Securities Exchange Act Release Nos. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR–NYSEArca–2015–99); 78377 (July 21, 2016), 81 FR 49327 (July 27, 2016) (SR–NYSEARCA–2016–99); and 80116 (February 28, 2017), 82 FR 12663 (March 6, 2017) (SR–NYSEArca–2017–18).

[6] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

[7] MEMX Data would also include the test feed for MEMX Memoir market data.

[8] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

[9] Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

[10] Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee

Continued

able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any colocation service, including connectivity to Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. 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.'' [11]

The Exchange understands that the third party Quincy Data LLC (''Quincy'') [12] already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange's proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [16] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [17] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.[18] Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[19] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.[20]

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber

for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* 82 FR 12663, *supra* note 5, at note 8, and Securities Exchange Act Release No. 98964 (November 16, 2023), 88 FR 81449 (November 22, 2023) (SR–NYSEARCA–2023–79).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

[18] Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

[19] *See* 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

[20] The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the ''Patch Panel Point'') is normalized.[21] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms (''Telecoms'').[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if

[21] *See* NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

[22] *See id.*

[23] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[24] *See* Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR–NYSEARCA–2023–47) (''MMR Notice'').

[25] *See id.* at 50246. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[26] *See* Wireless Approval Order, *supra* note 16.

a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[27]

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.[28] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[29] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[30] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[31] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[32] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an

[27] 15 U.S.C. 78f(b)(8).

[28] *See supra* note 21.

[29] *See id.*

[30] *See supra* note 23.

[31] *See* MMR Notice, *supra* note 24.

[32] *See supra* note 25.

advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

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 [33] and Rule 19b–4(f)(6) thereunder.[34] 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.[35]

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) [36] 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–NYSEARCA–2024–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–NYSEARCA–2024–26 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06343 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange 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.

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99794; File No. SR–BX–2024–010]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 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 13, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW × $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than $3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–BX–2024–009). The instant filing replaces SR–BX–2024–009, which was withdrawn on March 13, 2024.

[4] On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99643 (February 29, 2024), 89 FR 16040 (March 6, 2024) (SR–BX–2024–007).

[5] *See* Securities Exchange Act Release No. 34–62396 (June 28, 2010), 75 FR 38585 (July 2, 2010) (SR–BX–2010–012).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. *See* SR–BX–2024–008 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. *See* SR–BX–2024–008 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–010 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–BX–2024–010. 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–BX–2024–010 and should be submitted on or before April 16, 2024.

[16] There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.* No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.* This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06330 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99809; File No. SR–NYSECHX–2024–11]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 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 8, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (''Fee Schedule'') regarding colocation services and fees to provide Users[4] with wireless connectivity to MEMX LLC (''MEMX'') market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the ''Existing Third Party Data''),[5] and wired connections to more than 45 market data feeds or combinations of feeds.[6] The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed[7] (''MEMX Data'' and, together with the Existing Third Party Data, the ''Third Party Data''). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (''MDC'').[8]

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange's proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, ''[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.''[9]

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (''Single Port Third Party Data''), it would not receive an additional port for the MEMX Data, as one would not be needed.[10] Rather, the User would be able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any colocation service, including connectivity to Third Party Data, is

[18] 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] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2024–15, SR–NYSEAMER–2024–18, SR–NYSEARCA–2024–26, and SR–NYSENAT–2024–09.

[5] *See* 84 FR 58778, *supra* note 4, at 58784–85.

[6] *See id.* at 58787–88.

[7] MEMX Data would also include the test feed for MEMX Memoir market data.

[8] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

[9] Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

[10] Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* Securities Exchange Act Release Nos. 80215 (February 28, 2017), 82 FR 12658 (March 6, 2017) (SR–NYSE–2017–05); and 98965 (November 16, 2023), 88 FR 81490 (November 22, 2023) (SR–NYSECHX–2023–22).

completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. 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.'' [11]

The Exchange understands that the third party Quincy Data LLC (''Quincy'') [12] already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange's proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [16] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [17] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.[18] Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[19] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.[20]

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the ''Patch Panel Point'') is normalized.[21] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

[18] Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

[19] *See* 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

[20] The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

[21] *See* NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

[22] *See id.*

Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms (''Telecoms'').[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX

[23] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[24] *See* Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50196 (August 1, 2023) (SR–NYSECHX–2023–14) (''MMR Notice'').

[25] *See id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[26] *See* Wireless Approval Order, *supra* note 16.

market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[27]

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.[28] Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[29] Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[30] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[31] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[32] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

[27] 15 U.S.C. 78f(b)(8).

[28] *See supra* note 21.

[29] *See id.*

[30] *See supra* note 23.

[31] *See* MMR Notice, *supra* note 24.

[32] *See supra* note 25.

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 [33] and Rule 19b–4(f)(6) thereunder.[34] 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.

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) [35] 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–NYSECHX–2024–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2024–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–NYSECHX–2024–11 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06344 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99799; File No. SR–ISE–2024–13]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 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 13, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change [3] is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (''kW'').[4]

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.[5]

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is $1,055/month [6] per medium or low density cabinets and $1,583/month [7] per medium/high or high density cabinets.[8] The Exchange proposes to establish a Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW.[9] As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of $3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for ''PNU cabinets'' [10] available to customers of co-location facilities of the New York Stock Exchange LLC (''NYSE''), which charges a monthly fee of $360 per kW for PNU cabinets.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of $360 per kW for PNU cabinets.[14] As noted above, NYSE offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.[15] The Exchange's proposal would establish a flat $3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be $3,600 (*e.g.,* 10 kW × $360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than $3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of $3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–ISE–2024–10). The instant filing replaces SR–ISE–2024–10, which was withdrawn on March 13, 2024.

[4] On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. *See* Securities Exchange Act Release No. 34–99647 (February 29, 2024), 89 FR 16047 (March 6, 2024) (SR–ISE–2024–07).

[5] *See* Securities Exchange Act Release No. 34–62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019). In 2017, the Exchange synchronized its options for connecting to the Exchange with that of its sister exchanges and adopted uniform colocation services, including the Cabinet Proximity Option program. *See* Securities Exchange Act Release No. 34–81903 (October 19, 2017), 82 FR 49450 (October 25, 2017) (SR–ISE–2017–91).

[6] On March 1, 2024, the Exchange increased the fee from $1,000 to $1,055. *See* SR–ISE–2024–09 (not yet published).

[7] On March 1, 2024, the Exchange increased the fee from $1,500 to $1,583. *See* SR–ISE–2024–09 (not yet published).

[8] Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. *See* General 8, Section 1(a).

[9] Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. *See* General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

[10] Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers ''PNU cabinets,'' which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. *See* Securities Exchange Act Release No. 34–90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). *See also* Securities Exchange Act Release No. 34–91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

[11] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* NYSE Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[15] *Supra* note 10.

other things, other options exchanges that a market participant may connect to in lieu of the Exchange,[16] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

[16] There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. *See* Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at *https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.* This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2024–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2024–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–ISE–2024–13 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06334 Filed 3–25–24; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

SBA Investment Capital Advisory Committee Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Federal advisory committee meeting: SBA Investment Capital Advisory Committee.

SUMMARY: The U.S. Small Business Administration (SBA) will hold the SBA Investment Capital Advisory Committee (ICAC) on Friday, April 12, 2024 (hereto referred to as ''Spring Meeting''). Members will convene as an independent source of advice and recommendation to SBA on matters relating to institutional investment market trends, innovation, and policy impacting small businesses and their ability to access patient capital. The meeting will be held virtually for members and streamed live to the public.

DATES: Friday, April 12, 2024, from 10:30 a.m. to 4:30 p.m. eastern time (ET).

ADDRESSES: The Investment Capital Advisory Committee Spring Meeting will be held via Zoom for Government (Webinar) for members and live streamed for the public. Register at *https://bit.ly/ICAC-April2024.*

FOR FURTHER INFORMATION CONTACT: Brittany Sickler, Designated Federal Officer, Office of Investment and Innovation, SBA, 409 3rd Street SW, Washington, DC 20416, (202) 369–8862 or *ICAC@sba.gov.* The meeting will be live streamed to the public, and anyone wishing to submit questions to the SBA Investment Capital Advisory Committee can do so by submitting them via email to *ICAC@sba.gov.* Individuals who require an alternative aid or service to communicate effectively with SBA should email the point of contact listed above and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA announces the inaugural meeting of the SBA Investment Capital Advisory Committee (the ''ICAC''). The ICAC is tasked with providing advice, insights, and recommendations to SBA on matters broadly related to facilitating greater access and availability of patient investment capital for small business; promoting greater awareness of SBA Investment and Innovation division programs and services; cultivating greater public-private engagement, cooperation, and collaboration; developing and/or evolving SBA programs and services to address long-term capital access gaps faced by small businesses and the investment managers that seek to support them. The final agenda for the meeting will be posted on the ICAC website at *https://www.sba.gov/about-sba/organization/sba-initiatives/investment-capital-advisory-committee* prior to the meeting. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Public Comment

Any member of the public may submit pertinent questions and comments concerning ICAC affairs at any time before or after the meeting and participate in the livestreamed meeting of the SBA Investment Capital Advisory Committee on April 12. Comments may be submitted to Brittany Sickler at *ICAC@sba.gov.* Those wishing to participate live are encouraged to register by or before Monday, April 1, 2024, using the registration link provided above. Advance registration is strongly encouraged.

Dated: March 20, 2024.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2024–06367 Filed 3–25–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 28, 2024.

ADDRESSES: Send all comments to, Office of Capital Access, Office of Financial Assistance, 7(a) Loan Policy Division, Small Business Administration, Ginger Allen, at *Ginger.Allen@sba.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Ginger Allen, Chief, 7(a) Loan Policy Division, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–7110 or *Ginger.Allen@sba.gov,* or Daniel Pische, Director, International Trade Finance, Office of International Trade, Small Business Administration, at (202) 205–7119 or *Daniel.Pische@sba.gov.* The phone numbers above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

Curtis B. Rich, Agency Clearance Officer *curtis.rich@sba.gov* 202–205–7030.

SUPPLEMENTARY INFORMATION: SBA is contemplating a new 7(a) Working Capital Pilot (WCP) Program within SBA's 7(a) Loan Programs. As part of the implementation of this program SBA has created a new addendum to SBA Form 1919, SBA Form 2534, ''7(a) Working Capital Pilot Program Addendum to SBA Form 1919'', to collect specific Applicant business information for the 7(a) WCP Program when a Lender submits a 7(a) WCP application for guaranty. The collection of this information assists in identifying Applicant businesses applying for the 7(a) WCP Program and pertinent information applicable to the pilot program. The form is comprised of questions that help identify the delivery method(s) of the 7(a) WCP loan, gather data for asset-based 7(a) WCP loans regarding initial advance rates for accounts receivable and inventory, and whether 7(a) WCP loan proceeds will be used to refinance the Lender's same institution SBA Express loan(s). SBA Form 2534 must be completed by the Lender and the information from the form will be submitted to SBA electronically via SBA's electronic transmission (E-Tran) platform. Only one form will be submitted as part of an application. SBA expects most Lenders to collect the data through internal or third-party software platforms. Lenders must retain the form in the respective loan file.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether

there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number: 3245–.

Title: SBA Form 2534 ''7(a) Working Capital Pilot Program Addendum to SBA Form1919''.

Description of Respondents: SBA 7(a) Lenders processing WCP Program Loans.

Form Number: 2534.

Total Estimated Annual Responses: 214.

Total Estimated Annual Hour Burden: 17.83.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–06421 Filed 3–25–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12361]

International Joint Commission Reference To Address Water Pollution in the Elk-Kootenai/y Watershed

AGENCY: International Joint Commission, Department of State.

ACTION: Notice.

SUMMARY: By letters dated March 8, 2024, the Governments of Canada and the United States provided a reference to the International Joint Commission (IJC), requesting that the IJC undertake certain actions regarding the impacts of transboundary water pollution in the Elk Kootenai/y Watershed. In accordance with the reference, the IJC will: assist the Governments of the United States, Canada, and the Ktunaxa Nation, along with the States of Montana and Idaho and the Province of British Columbia, to establish a governance body and develop a Terms of Reference by June 30, 2024 and provide continued advice and assistance to that entity for a minimum of two years; and establish a study board within six months to conduct transparent and coordinated transboundary data and knowledge sharing to support a common understanding of pollution within the Elk-Kootenai/y watershed and the impacts of that pollution on people and species, culminating in a final report and recommendations, including recommendations of areas for further study, within two years after the establishment of the study board.

FOR FURTHER INFORMATION CONTACT: United States: Ed Virden, 202–372–7990, *edward.virden@ijc.org;* Canada: Paul Allen, 613–222–1475, *paul.allen@ijc.org;* General questions, comments, and requests to be added to the IJC mailing list: *Elk-Kootenai/y_Study@ijc.org.*

SUPPLEMENTARY INFORMATION: The International Joint Commission was organized in 1911 pursuant to article VII of the treaty of January 11, 1909, with Great Britain, 36 Stat. 2448. The IJC invites interested persons to request to be added to the IJC's mailing list to be kept updated on activities with respect to this reference. The IJC will seek opportunities for public engagement and will make its reports available in a transparent, publicly available format.

The Elk River rises in the Canadian Rockies and flows into the United States at Lake Koocanusa, an impoundment of the Kootenay/Kootenai River. It then flows through the states of Montana and Idaho, and Ktunaxa lands, in route back to the province of British Columbia.

The reference was provided to the IJC pursuant to Article IX of the Boundary Waters Treaty of 1909. Documents related to the reference can be found on the IJC website at: *https://ijc.org/en/reference-elk-kootenaiy-watershed.*

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. The Commission's responsibilities include investigating and reporting on issues of concern when asked by the governments of the two countries. For more information, visit the IJC website at ijc.org.

Susan E. Daniel,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2024–06368 Filed 3–25–24; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0030]

Massachusetts Bay Transportation Authority's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 15, 2024, the Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system to install Automatic Train Control (ATC) on the final segment of MBTA's Needham Line. The construction zone will cover ATC implementation from the Need Interlocking at Milepost (MP) 11.9 to Control Point (CP) Land at MP 13.8, and is planned to occur from June 20, 2024, to July 22, 2024. FRA is publishing this notice and inviting public comment on MBTA's RFA to its PTC system.

DATES: FRA will consider comments received by April 15, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on March 15, 2024, MBTA submitted an RFA to its PTCSP for its Advanced Civil Speed

Enforcement System II (ACSES II), which seeks FRA's approval to install ATC on the final segment of MBTA's Needham Line. The construction zone will cover ATC implementation from the Need Interlocking at MP 11.9 to CP Land at MP 13.8. ATC installation is planned to occur from June 20, 2024, to July 22, 2024. This RFA is available in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's RFA by submitting written comments or data. During review of MBTA's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024–06414 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0031]

Long Island Rail Road's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 18, 2024, the Long Island Rail Road (LIRR) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system to establish an Advanced Civil Speed Enforcement System II (ACSES II) Construction Zone to support the building of a new interlocking and associated signal system changes on LIRR's Mainline near Floral Park at Milepost (MP) 15.5. According to the RFA, the Construction Zone is planned be implemented on May 10, 2024, and is scheduled to not exceed a three-month duration. FRA is publishing this notice and inviting public comment on LIRR's RFA to its PTC system.

DATES: FRA will consider comments received by April 15, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0031. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on March 18, 2024, LIRR submitted an RFA to its PTCSP for its ACSES II system, which seeks FRA's approval for the implementation of a Construction Zone to support the building of a new interlocking and associated signal system changes on LIRR's Mainline near Floral Park at MP 15.5. According to the RFA, the Construction Zone is planned to be implemented on May 10, 2024, and is scheduled to not exceed a three-month duration. This RFA is available in Docket No. FRA–2010–0031.

Interested parties are invited to comment on LIRR's RFA by submitting written comments or data. During review of LIRR's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024–06416 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0084; Notice 2]

Daimler Coaches North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Coaches North America, LLC, (DCNA), a subsidiary of Daimler AG, has determined that certain model year (MY) 2012–2019 Setra S407 and MY 2009–2020 Setra S417 buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* DCNA filed a noncompliance report dated July 15, 2020, and amended it on July 16, 2020, and March 24, 2021. DCNA subsequently petitioned NHTSA (the ''Agency'') on August 4, 2020, later amended it on October 1, 2020, and provided supplemental information on February 5, 2021, March 5, 2021, and March 25, 2021, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This notice announces receipt of DCNA's petition and supplemental information.

DATES: Send comments on or before April 25, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7487.

SUPPLEMENTARY INFORMATION: *I. Overview:* DCNA has determined that certain MY 2012–2019 Setra S407 and MY 2009–2020 Setra S417 buses do not fully comply with the requirements of paragraphs S.5.3.1, S5.3.2, and Table 1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). DCNA filed a noncompliance report dated July 16, 2020, and amended it on March 24, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DCNA subsequently petitioned NHTSA on August 4, 2020, later amended it on October 1, 2020,[1] and submitted supplemental information on February 5, 2021, March 5, 2021, and March 25, 2021, for an exemption from the notification and remedy, requirements of 49 U.S.C. chapter 301 on the basis that this noncompliances are inconsequential as they relate to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

NHTSA previously published notice of receipt of DCNA's petition on November 9, 2020, (85 FR 71392). DCNA provided supplemental information to NHTSA on February 5, 2021, March 5, 2021, and March 25, 2021, that broadened the scope of DCNA's petition. Therefore, NHTSA invites interested persons to comment on DCNA's petition and supplemental information. This notice of receipt of DCNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Buses Involved: Approximately 538 MY 2012–2019 Setra S407 and MY 2009–2020 Setra S417 motorcoach buses manufactured between May 19, 2009, and January 30, 2019, are potentially involved.

III. Noncompliance: DCNA explains that the noncompliance is that the windshield defogging/defrosting indicators, the hazard warning signal indicators, and the HVAC indicators in the subject buses do not meet the timing and brightness of illumination requirements provided in paragraphs S5.3.1 and S5.3.2 of FMVSS No. 101. Specifically, the brightness of the windshield defogging/defrosting and HVAC indicators cannot be adjusted, and the hazard warning signal indicator does not illuminate.

IV. Rule Requirements: Paragraphs S5.3.1 and S5.3.2 of FMVSS No. 101 include the requirements relevant to this petition. Means must be provided for controlling the timing of illuminating indicators, the brightness of illuminating indicators, identification of indicators, and the identification of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions. The means of providing the visibility required by paragraph S5.3.2. must be adjustable to provide at least two levels of brightness.

V. Summary of DCNA's Petition: The following views and arguments presented in this section, ''V. Summary of DCNA's Petition,'' are the views and arguments provided by DCNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. DCNA describes the subject

[1] DCNA's amended petition is dated August 4, 2020, but was submitted on October 1, 2020.

noncompliances and contends that the noncompliances are inconsequential as they relate to motor vehicle safety.

In support of its petition, which is available in full on the docket, DCNA explains its understanding of FMVSS No. 101 and states its belief that the subject noncompliances do not increase risk to motor vehicle safety. DCNA says that FMVSS No. 101, ''is premised on ensuring the various controls, telltales, and indicators can easily be recognized in order to facilitate the driver's selection under day and nighttime conditions, to prevent the mistaken selection of controls and to reduce potential safety hazards when the driver's attention is diverted from the driving task.'' DCNA further explains that FMVSS No. 101 sets requirements for the location (S5.1), identification (S5.2), and illumination (S5.3) of various controls and displays, and Table 1 of the standard provides the illumination and color requirements for those controls, telltales, and indicators. Specifically, DCNA explains that S5.3.1(b) requires that the controls listed in Table 1 of FMVSS No. 101, including those for the hazard and windshield defrost/defog control, are required to be illuminated when the headlamps are activated, and the brightness of the control must be adjustable to at least two levels.

DCNA believes that ''the lack of illumination on the hazard warning lamp symbol included on the control and inability to adjust the brightness of the defrost/defog control'' does not present an increased risk to motor vehicle safety. DCNA states that the affected controls are fully operable. DCNA describes the operation and design of the hazard warning lamp control for the subject buses and provides its assessment of the risk to motor vehicle safety. DCNA explains that the ''hazard warning lamp is controlled by a large red plastic toggle switch that is 19 mm across by 40 mm high'' and to activate the control the driver would press the bottom half of the switch downward with one finger until there is a clicking noise. DCNA states that operation of the hazard warning lamp ''is confirmed because the hazard lamp itself will flash on and off and both the right and left turn signal indicators in the instrument cluster will flash on and off and in unison with the hazard warning lamps on the exterior of the vehicle.'' Therefore, DCNA claims that a driver of the subject buses would still be able to confirm that the hazard warning lamp is operating as intended.

DCNA further states that a driver of the affected buses would be able to identify and locate the hazard warning lamp switch even under nighttime conditions because the switch is located to the immediate right of the driver, is at eye level, and is the only switch in that area that is red, rather than black or grey. Thus, DCNA believes that the hazard warning lamp switch is conspicuous and ''readily apparent under all operating conditions.''

DCNA describes the operation and design of the windshield defrost/defog control for the subject buses and states that the windshield defrost/defog symbol is located adjacent to the turn-style control knob DCNA also states that it activates the windshield defrost/defog function and that both the symbol and control knob are automatically illuminated when the subject bus's headlamps are activated but cannot be dimmed, which is required by S5.3.2.1 of FMVSS No. 101. DCNA claims that each of the functions surrounding the windshield defrost/defog symbol, many of which are not regulated by FMVSS No. 101, Table 1, are illuminated. DCNA explains that there is a master switch that allows the driver to adjust the brightness of the area surrounding them and dimming can be controlled ''within the meter assembly menu for the dashboard lights and is adjustable to more than two different levels of brightness.'' Furthermore, DCNA states that the controls at issue are located within a group of controls that is ''responsible for the heating, cooling, and temperature operations of the driver's compartment of the vehicle.'' Therefore, DCNA contends that a driver of the subject bus would be familiar with the location of the defrost/defog control because it is located within a cluster of controls that operate similar functions. Thus, DCNA believes that ''there is little to no risk that the driver's vision would otherwise be impaired if the display was too bright or too dim.''

DCNA notes that a driver of the subject bus would be professionally trained and would therefore be likely to have experience operating the bus and be ''knowledgeable about the location and function of all of the controls and devices within the vehicle.'' DCNA says that the area forward of the driver's seat in the subject buses' interior cabin is ''sufficiently lit by roadway lighting, other illuminated controls, telltales, and the light emitted from the display of the instrument cluster.'' According to DCNA, when operating the subject buses with the headlamps turned on, the dashboard lamps will also be illuminated which will illuminate the hazard warning lamp as well as other controls and indicators.

DCNA states that NHTSA has granted prior petitions for inconsequential noncompliance ''where certain controls, telltales, and indicators listed in Table 1 were not visible to the driver under all day and night driving conditions.'' Specifically, DCNA refers to a petition in which ''an electrical condition which could cause the headlamp upper beam indicator telltale to extinguish for various periods of time and under certain conditions.'' In this case, DCNA says that NHTSA determined that the upper beam telltale would only need to be illuminated during nighttime driving conditions, when a comparatively small portion of driving occurs at night, the time of headlamp activation.[2]

DCNA reiterates that the subject buses are mostly used commercially, therefore, the drivers are trained and ''should be familiar with the layout, placement, and operation of the hazard warning lamp and defog/defrost controls.'' DCNA states that NHTSA has also granted prior petitions where the potential safety consequence of a noncompliance with FMVSS No. 101 would be diminished because it is expected that the driver would monitor the condition of the vehicle closely ''to ensure the systems are properly operating.'' Additionally, DCNA says that there are several petitions where NHTSA found that the potential risk to motor vehicle safety was diminished when the vehicle is operated by a trained driver because professional drivers will become familiar with the meaning of the telltales and other warnings and understand them.[3]

DCNA concludes by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

On February 5, 2021, March 5, 2021, and March 25, 2021, DCNA submitted supplemental information. In the supplemental submission dated February 5, 2021, DCNA clarifies that the reference to dimming through the meter assembly menu means that within the instrument cluster that is directly in front of the driver, there is a master

[2] *See* General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance, 56 FR 33323 (July 19, 1991).

[3] *See* Mack Trucks, Inc., and Volvo Trucks North America, Grant of Petitions for Decision of Inconsequential Noncompliance, 84 FR 67766 (December 11, 2019); Autocar Industries, LLC, and Hino Motors Sales U.S.A., Inc., Grant of Petitions for Decision of Inconsequential Noncompliance, 84 FR 11162 (March 25, 2019); Daimler Trucks North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 82 FR 33551 (July 20, 2017).

switch that operates the dimming function for the controls that surround the driver.

On March 5, 2021, DCNA provided photos [4] depicting the noncompliance under various conditions. Further, in the same supplemental submission, DCNA noted that, under further testing, the illumination of the HVAC controls did not cause any driver glare and did not appear brighter than any of the adjacent markings of the HVAC controls and indicators were still sufficiently recognizable.

On March 25, 2021, DCNA submitted that in addition to the issues originally noted in its petitions, the controls for the vehicle's HVAC system that are covered by FMVSS No. 101, Table 1 can be illuminated but are not dimmable as required by S5.3.2. Specifically, the heating and air-conditioning system and heating and air-conditioning fan are affected. DCNA states that despite the condition that these two controls cannot be dimmed on the vehicles at issue, this does not create an increased safety risk. These two controls are located in the same area as all the other vehicle HVAC controls and their location would be readily known to the experienced professional drivers that operate the motor coaches at issue here. Additionally, the master switch used for adjusting the brightness of the area surrounding the driver is fully operable and adjustable to more than two different levels of brightness. Consequently, DCNA believes that there is little to no risk of illumination of controls for the heating and air-conditioning system and heating and air-conditioning fan could be overly bright and impair the vision of the driver.

DCNA's complete petition and all supporting documents are available by logging onto the FDMS website at: *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject buses that DCNA no longer controlled at the time it determined that the noncompliances existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant buses under their control after DCNA notified them that the subject noncompliances existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–06281 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–59–P

[4] These photos are available on the FDMS website.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0047; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Michelin North America, Inc. (MNA) has determined that certain Michelin LTX AT2 tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires For Light Vehicles.* MNA filed an original noncompliance report dated April 14, 2023, and later amended the report on July 3, 2023. MNA subsequently petitioned NHTSA (the ''Agency'') on April 17, 2023, and later amended the petition on July 6, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of MNA's petition.

DATES: Send comments on or before April 25, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview: MNA determined that certain Michelin LTX AT2 tires sizes LT275/65R20 and 126/123R do not fully comply with paragraphs S5.5(e) and

S5.5(f) of FMVSS No. 139, *New Pneumatic Radial Tires For Light Vehicles* (49 CFR 571.139).

MNA filed an original noncompliance report dated April 14, 2023, and later amended the report on July 3, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA petitioned NHTSA on April 17, 2023, and later amended the petition on July 6, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Tires Involved: Approximately 7,153 Michelin LTX AT2 tires sized LT275/65R20 and 126/123R, manufactured between January 15, 2023, and February 8, 2023, were reported by the manufacturer.

III. Noncompliance: MNA explains that the subject tires contain incorrect information regarding the general name of cord materials and actual number of plies on the intended outboard sidewall of the tires, and therefore, do not fully comply with paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139. Specifically, the sidewall of the subject tires states ''TREAD PLIES: 2 POLYESTER + 2 STEEL SIDEWALL PLIES: 2 POLYESTER,'' when they should state ''TREAD PLIES: 2 POLYESTER + 1 POLYAMIDE + 2 STEEL SIDEWALL PLIES: 2 POLYESTER.''

IV. Rule Requirements: Paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139 include the requirements relevant to this petition. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches. Paragraph S5.5(e) requires that the sidewall be marked with the generic name of each cord material used in the plies (both sidewall and tread area) of the tire, and paragraph S5.5(f) requires that the sidewall be marked with the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

V. Summary of MNA's Petition: The following views and arguments presented in this section, ''V. Summary of MNA's Petition,'' are the views and arguments provided by MNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

MNA explains that the subject noncompliance occurred as a result of an error made by a maintenance employee at the manufacturing site. On January 15, 2023, the employee accidentally used the incorrect plaquette when replacing a loose one in a mold for the subject tire. A tire verification employee noticed a gap in the information in the tread plies plaquette on the intended outboard side of the tire and notified the Quality team. MNA says that its internal investigation revealed that of the 7,997 tires produced, approximately 813 affected tires were identified and contained and approximately 598 affected tires (8 percent) of the production during this time period had entered the U.S. market.

MNA asserts that the subject tires comply with all applicable FMVSS tire safety performance standards and they are marked with the correct tire size information, including the load range and maximum single and dual loads at the specified pressures. Further, MNA says that the subject tires were tested and passed all applicable FMVSS No. 139 performance tests. MNA says that it has taken corrective measures and removed the incorrect plaquette from the mold used on the subject tires and replaced it with the correct plaquette.

MNA contends that NHTSA has found petitions for similar noncompliances to be inconsequential to motor vehicle safety. MNA provides the following examples:

1. Michelin North America, Inc., NHTSA docket number 2020–0092, granted 7 February 2022
2. Hankook Tire America Corporation, NHTSA docket number 2020–0020, granted 21 January 2022
3. Continental Tire the Americas, LLC, NHTSA docket number 2017–0040, granted 30 July 2018
4. Sumitomo Rubber Industries, Ltd., NHTSA docket number 2017–0071, granted 26 March 2018
5. The Goodyear Tire and Rubber Company, NHTSA docket number 2016–0107, granted 17 April 2017

MNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tires distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–06423 Filed 3–25–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2024–0004]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The OCC announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, April 16, 2024, beginning at 8:30 a.m. Eastern Daylight Time (EDT). The meeting will be in person and virtual.

ADDRESSES: The OCC will hold the April 16, 2024, meeting of the MDIAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219 and virtually.

FOR FURTHER INFORMATION CONTACT: André King, Designated Federal Officer and Assistant Deputy Comptroller, (202) 649–5420, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. You may also access prior MDIAC meeting materials on the MDIAC page of OCC's website.[1]

SUPPLEMENTARY INFORMATION: Under the authority of the Federal Advisory Committee Act (the Act), 5 U.S.C. 1001 *et seq,* and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MDIAC will convene a public meeting at 8:30 a.m. EDT on Tuesday, April 16, 2024. Agenda items will include a discussion of current regulatory and operational topics of interest to the industry, for example, updates on economic trends affecting minority depository institutions and the implementation of rules and policies that affect the operations and consumer compliance activities of minority depository institutions. The agenda also includes a Roundtable discussion with MDIAC members and OCC staff.

The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. In addition to attending the meeting, members of the public may submit written statements to the MDIAC by email to: *MDIAC@occ.treas.gov.*

The OCC must receive any written statements no later than 5 p.m. EDT on Thursday, April 11, 2024. Members of the public who plan to attend the public meeting should contact the OCC by 5:00 p.m. EDT on Thursday, April 11, 2024—to indicate whether they will attend in person or virtually, and to obtain information about participating in the meeting—via email at *MDIAC@occ.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. Members of the public who are deaf, hard of hearing, or have a speech disability, should dial 7–1–1 to access telecommunications relay services for this meeting.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024–06393 Filed 3–25–24; 8:45 am]

BILLING CODE 4810–33–P

[1] *https://www.occ.gov/topics/supervision-and-examination/bank-management/minority-depository-institutions/minority-depository-institutions-advisory-committee.html.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements.

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: 1545–0723, TD 8043, (Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Treasury Decision 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: Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes Reporting and Recordkeeping Requirements.

OMB Number: 1545–0723.

Regulation Project Number: T.D. 8043.

Abstract: Chapters 31 and 32 of the Internal Revenue Code impose excise taxes on the sale or use of certain articles. Code section 6416 allows a credit or refund of the tax to manufacturers in certain cases. Code sections 6420, 6421, and 6427 allow credits or refunds of the tax to certain users of the articles. This regulation contains reporting and recordkeeping requirements that enable the IRS and taxpayers to verify that the proper amount of tax is reported or excluded.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The regulation is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 1,500,000.

Estimated Time per Response: 19 minutes.

Estimated Total Annual Burden Hours: 475,000.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2024.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2024–06399 Filed 3–25–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the statement of liability of lender, surety, or other person for withholding taxes.

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: 1545–2254, Form 4219,(Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form 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: Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes.

OMB Number: 1545–2254.

Form Number: Form 4219.

Abstract: Third parties who directly pay another's payrolls can be held liable for the full amount of taxes required to be withheld but not paid to the Government (subject to the 25% limitation). IRC 3505 deals with persons who supply funds to an employer for the purpose of paying wages. The notification that a third party is paying or supplying wages will usually be made by filing of the Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes. The Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes, is to be submitted and associated with each employer and for every calendar quarter for which a liability under section 3505 is incurred.

Current Actions: There have been no changes to the form that would affect burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 12 hours, 50 minutes.

Estimated Total Annual Burden Hours: 12,833.

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. 2024–06400 Filed 3–25–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 8383

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning disclosure of tax return information for purposes of quality or peer reviews, disclosure of tax return information due to incapacity or death of tax return preparer.

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: 1545–1209, TD 8393 (Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews, Due to Incapacity or Death of Tax Return Preparer), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure 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: Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews, Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209. Regulation Project Number: TD 8383.

Abstract: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250,000.

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. 2024–06397 Filed 3–25–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Sales of Business Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning sales of business property.

DATES: Written comments should be received on or before May 28, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.* Please reference ''OMB Control Number 1545–0184'' in the Subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Sara Covington, at (202) 317–5744 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545–0184.

Form Number: Form 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time. The forms are being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 799,282.

Estimated Time per Response: 51 hours, 12 minutes.

Estimated Total Annual Burden Hours: 40,859,296.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2024.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2024–06383 Filed 3–25–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

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 843, Claim for Refund and Request for Abatement.

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: 1545–0024, Form 843 (Claim for Refund and Request for Abatement), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form 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: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code section 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and State, local or Tribal governments.

Estimated Number of Responses: 550,500.

Estimated Time per Respondent: 1 hr., 35 min.

Estimated Total Annual Burden Hours: 875,295.

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. 2024–06401 Filed 3–25–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8945

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8945, PTIN Supplemental Application For U.S. Citizens Without a Social Security Number Due to Conscientious Religious Objection.

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: 1545–2188, Form 8945 (PTIN Supplemental Application for U.S. Citizens Without A Social Security Number Due To Conscientious Religious Objection), Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form 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: The IRS is seeking comments concerning the following form, and reporting and record-keeping requirements:

Title: PTIN Supplemental Application for U.S. Citizens Without A Social Security Number Due To Conscientious Religious Objection.

OMB Number: 1545–2188.

Form Number: 8945.

Abstract: Form 8945 is used by U.S. citizens who are members of certain recognized religious groups that want to prepare tax returns for compensation. Most individuals applying for a Preparer Tax Identification Number (PTIN) will have a social security number, which will be used to help establish their identity. However, there exists a population of U.S. residents that are religious objectors and do not have social security numbers. Form 8945 was created to assist that population in establishing their identity while applying for a PTIN.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 7 hrs., 11 min.

Estimated Total Annual Burden Hours: 3,590.

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 Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

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 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 the requested information.

Approved: March 20, 2024.

Molly J. Stasko,

Senior, Tax Analyst.

[FR Doc. 2024–06398 Filed 3–25–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0530]

Agency Information Collection Activity: Loan Guaranty Servicing Procedures for Holders and Servicers of VA Guaranteed Loans

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0530'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–299–0530'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Loan Guaranty Servicing Procedures for Holders and Servicers of VA Guaranteed Loans.

OMB Control Number: OMB 2900–0530.

Type of Review: Extension of currently approved collection.

Abstract: The Department of Veterans Affairs (VA) Loan Guaranty program guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. Under 38 CFR 36.4350, a holder of a loan guaranteed or insured by the VA is required to develop and maintain a loan servicing program.

Affected Public: Individuals (employees of servicers making applications).

Estimated Annual Burden: 63 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: One-time.

Estimated Number of Respondents: 427.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–06365 Filed 3–25–24; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

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