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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2020–1084]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Zipline International Inc. Zip UAS Sparrow Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Issuance of final airworthiness criteria.

SUMMARY: The FAA announces the special class airworthiness criteria for the Zipline International Inc. Model Zip UAS Sparrow unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

DATES: These airworthiness criteria are effective March 28, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

SUPPLEMENTARY INFORMATION:

Background

Zipline International Inc. (Zipline) applied to the FAA on March 25, 2019, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model Zip UAS Sparrow (Zip) unmanned aircraft system (UAS).

The Model Zip consists of an airplane UA and its associated elements (AE) including communication links and components that control the UA. The Model Zip UA has a maximum gross takeoff weight of 50 pounds. It has a wingspan of approximately 11 feet, is approximately 6 feet in length, and 2 feet in height. The Model Zip UA uses battery-powered electric motors for takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Zipline anticipates operators will use the Model Zip for transporting medical materials. The proposed concept of operations (CONOPS) for the Model Zip identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 56 knots, operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. Zipline has not requested type certification for flight into known icing for the Model Zip.

The FAA issued a notice of proposed airworthiness criteria for the Zipline Model Zip, which published in the **Federal Register** on November 20, 2020 (85 FR 74285).

Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

Discussion of Comments

The FAA received responses from 19 commenters. The majority of commenters were individuals. In addition to the individuals' comments, the FAA also received comments from the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), the Commercial Drone Alliance (CDA), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

Support

Comment Summary: ALPA, CDA, Novant Health, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

Terminology: Loss of flight

Comment Summary: An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

FAA Response: The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

Terminology: Skill and Alertness of Pilot

Comment Summary: Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

FAA Response: These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

Concept of Operations

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

Comment Summary: One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

FAA Response: Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of Zipline's proposed UA design.

Comment Summary: ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

FAA Response: The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)) must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

Comment Summary: ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

FAA Response: The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

Comment Summary: ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

FAA Response: The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

Comment Summary: UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

FAA Response: D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

Control Station

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

Comment Summary: ALPA and two individual commenters requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

FAA Response: Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design. The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

Software

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

Comment Summary: ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

FAA Response: By combining the software testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

Comment Summary: EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

FAA Response: Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

Comment Summary: Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

FAA Response: Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

Comment Summary: NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

FAA Response: The proper functioning of software is an important element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the Model Zip.

Cybersecurity

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

Comment Summary: ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

FAA Response: The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

Contingency Planning

The FAA proposed criteria requiring that the UAS be designed to

automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

Comment Summary: ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

FAA Response: The airworthiness criteria address the issues raised by the commenter. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

Comment Summary: An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

FAA Response: Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

Lightning

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

Comment Summary: An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

FAA Response: The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

Adverse Weather Conditions

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

Comment Summary: ALPA and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model Zip, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

FAA Response: No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

Comment Summary: One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

FAA Response: The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

Critical Parts

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

Comment Summary: EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

FAA Response: For purposes of the airworthiness criteria established for the Zipline Model Zip, the FAA has changed the term ''critical part'' to ''flight essential part.''

Comment Summary: An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

FAA Response: The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model Zip UA apply the same approach as for manned aircraft.

Comment Summary: An individual commenter requested the FAA add a requirement to D&R.135 (proposed as UAS.135) for the applicant to define all elements of type design, including the vehicle, control station, C2 link, and launch and recovery equipment. The commenter stated that an approved type design will be necessary for inspection and conformity by the FAA, as well as for continued airworthiness.

FAA Response: These airworthiness criteria do not change the requirements under part 21 for the information an applicant must include in its application for a type certificate. As the FAA explained in the notice of proposed airworthiness criteria, the FAA has developed these criteria to establish safety outcomes that must be achieved, rather than prescriptive design requirements that must be met. The type certificate will include any necessary operating limitations, such as those prohibiting conditions under which the UA is not approved to operate (*e.g.,* lightning, adverse weather). Similarly, while the AE items (such as the control station, C2 link, and launch and recovery equipment) will be outside the scope of the UA type design, the AE will be included as an operating limitation in the type certificate data sheet and flight manual, and therefore approved as part of the type certificate. Responsibilities for continued operational safety will apply to the UA as provided in 14 CFR part 21.

Flight Manual

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

Comment Summary: ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

FAA Response: The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the Zipline Model Zip UA.

Comment Summary: ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

FAA Response: ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

Comment Summary: Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

FAA Response: The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with Appendix A to Part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

Comment Summary: An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

FAA Response: The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

Comment Summary: NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

FAA Response: As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for, and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

Durability and Reliability

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in

the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

Comment Summary: ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

FAA Response: No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

Comment Summary: Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

FAA Response: Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

Comment Summary: EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

FAA Response: In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

Comment Summary: EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

FAA Response: As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

Comment Summary: EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

FAA Response: No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

Comment Summary: EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

FAA Response: Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

Comment Summary: EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

FAA Response: Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

Comment Summary: An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

FAA Response: The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

Comment Summary: The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

FAA Response: The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

Probable Failures

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

Comment Summary: Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

FAA Response: Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model Zip UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the Zip reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model Zip UA.

Comment Summary: ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

FAA Response: No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

Comment Summary: Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

FAA Response: D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

Comment Summary: Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

FAA Response: The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

Comment Summary: EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

FAA Response: The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

Comment Summary: An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

FAA Response: The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection

interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

Capabilities and Functions

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

Comment Summary: ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

FAA Response: Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

Comment Summary: ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

FAA Response: The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by §§ 23.2510, 25.1309, 27.1309, or 29.1309, would be inappropriate to require for the Zipline Model Zip due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

Comment Summary: ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

FAA Response: No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

Comment Summary: ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

FAA Response: To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model Zip UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

Comment Summary: ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

Comment Summary: McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

Verification of Limits

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

Comment Summary: EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

FAA Response: The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

Propulsion

Comment Summary: ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

FAA Response: Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

Additional Airworthiness Criteria Identified by Commenters

Comment Summary: McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

FAA Response: The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

Comment Summary: ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

FAA Response: The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

Comment Summary: ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

FAA Response: The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

Pilot Ratio

Comment Summary: ALPA and one individual questioned the safety of multiple Model Zip UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

FAA Response: These airworthiness criteria are specific to the Model Zip UA and, as discussed previously in this preamble, operations of the Model Zip UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

Comment Summary: ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

FAA Response: The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27 and 29), subpart B of each is titled Flight.

Noise

Comment Summary: An individual commenter expressed concern about noise pollution.

FAA Response: The Model Zip will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

Operating Altitude

Comment Summary: ALPA, McMahon Helicopter Services, and NAAA commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

FAA Response: The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

Guidance Material

Comment Summary: NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

FAA Response: The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

Safety Management

Comment Summary: ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

FAA Response: The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

Process

Comment Summary: ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

FAA Response: As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in parts 23, 25, 27, or 29.

Out of Scope Comments

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Zipline Model Zip UA. Should Zipline wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

Conclusion

This action affects only certain airworthiness criteria for the Zipline Model Zip UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701–44702, 44704.

Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Zipline Model Zip unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cybersecurity

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must

establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on February 16, 2022.

Ian Lucas,

Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2020–1085]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Matternet, Inc. M2 Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of final airworthiness criteria.

SUMMARY: The FAA announces the special class airworthiness criteria for the Matternet, Inc. Model M2 unmanned aircraft (UA). This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

DATES: These airworthiness criteria are effective March 28, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

SUPPLEMENTARY INFORMATION:

Background

Matternet, Inc. (Matternet) applied to the FAA on May 21, 2018, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Model M2 unmanned aircraft system (UAS).

The Model M2 consists of a rotorcraft UA and its associated elements (AE) including communication links and components that control the UA. The Model M2 UA has a maximum gross takeoff weight of 29 pounds. It is approximately 50 inches in width, 50 inches in length, and 10 inches in height. The Model M2 UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Matternet anticipates operators will use the Model M2 for transporting medical materials. The proposed concept of operations (CONOPS) for the Model M2 identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 39 knots (45 mph), operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. Matternet has not requested type certification for flight into known icing for the Model M2.

The FAA issued a notice of proposed airworthiness criteria for the Matternet M2 UAS, which published in the **Federal Register** on November 20, 2020 (85 FR 74294).

Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

Discussion of Comments

The FAA received responses from 15 commenters. The majority of the commenters were individuals. Other commenters included the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, and organizations such as the Air Line Pilots Association (ALPA), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

Support

Comment Summary: ALPA, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). The Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

Terminology: Loss of Flight

Comment Summary: An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

FAA Response: The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

Terminology: Skill and Alertness of Pilot

Comment Summary: Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote

pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

FAA Response: These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience.

Concept of Operations

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

Comment Summary: One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

FAA Response: Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of Matternet's proposed UA design.

Comment Summary: ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

FAA Response: The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)) must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

Comment Summary: ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

FAA Response: The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

Comment Summary: ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards for the transportation of goods, similar to those for manned aviation.

FAA Response: The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

Comment Summary: UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

FAA Response: D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

Control Station

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

Comment Summary: ALPA and two individual commenters requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

FAA Response: Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[1] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[2] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will

[1] See 49 U.S.C. 44801(11).

[2] See 49 U.S.C. 44801(12).

consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design. The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

Software

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

Comment Summary: ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

FAA Response: By combining the software testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

Comment Summary: EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

FAA Response: Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

Comment Summary: Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

FAA Response: Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

Comment Summary: NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

FAA Response: The proper functioning of software is an important element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the Model M2.

Cybersecurity

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

Comment Summary: ALPA requested adding a requirement for cybersecurity protection for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

FAA Response: The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115) addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

Contingency Planning

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

Comment Summary: ALPA requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links.

FAA Response: The airworthiness criteria address the issues raised by the commenter. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise

the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

Comment Summary: An individual commenter requested the FAA use distinct terminology for ''communication,'' used for communications with air traffic control, and ''C2 link,'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

FAA Response: Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

Lightning

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

Comment Summary: An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected environmental conditions that must be replicated in testing.

FAA Response: The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

Adverse Weather Conditions

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

Comment Summary: ALPA and two individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model M2, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

FAA Response: No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

Comment Summary: One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

FAA Response: The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

Critical Parts

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

Comment Summary: EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

FAA Response: For purposes of the airworthiness criteria established for the Matternet Model M2, the FAA has changed the term ''critical part'' to ''flight essential part.''

Comment Summary: An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

FAA Response: The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model M2 UA apply the same approach as for manned aircraft.

Flight Manual

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

Comment Summary: ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

FAA Response: The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating

procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the Matternet Model M2 UA.

Comment Summary: ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

FAA Response: ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

Comment Summary: Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

FAA Response: The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with Appendix A to Part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

Comment Summary: An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

FAA Response: The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

Comment Summary: NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

FAA Response: As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

Durability and Reliability

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

Comment Summary: ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

FAA Response: No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

Comment Summary: Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

FAA Response: Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures.

Comment Summary: EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the

number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

FAA Response: In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

Comment Summary: EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

FAA Response: As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

Comment Summary: EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

FAA Response: No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

Comment Summary: EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

FAA Response: Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

Comment Summary: EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

FAA Response: Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

Comment Summary: An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

FAA Response: The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

Comment Summary: The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

FAA Response: The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

Probable Failures

The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

Comment Summary: Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

FAA Response: Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model M2 UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the M2 reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model M2 UA.

Comment Summary: ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

FAA Response: No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

Comment Summary: Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

FAA Response: D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

Comment Summary: Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

FAA Response: The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

Comment Summary: EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

FAA Response: The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

Comment Summary: An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

FAA Response: The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

Capabilities and Functions

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

Comment Summary: ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: Regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the

criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

FAA Response: Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria include D&R.310(a) as proposed (UAS.310(a)).

Comment Summary: ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

FAA Response: The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by §§ 23.2510, 25.1309, 27.1309, or 29.1309, would be inappropriate to require for the Matternet Model M2 due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

Comment Summary: ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

FAA Response: No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

Comment Summary: ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

FAA Response: To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model M2 UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

Comment Summary: ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

Comment Summary: McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

Verification of Limits

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

Comment Summary: EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight. [3] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

FAA Response: The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

Propulsion

Comment Summary: ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

FAA Response: Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

Additional Airworthiness Criteria Identified by Commenters

Comment Summary: McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these

[3] In the FAA's aircraft airworthiness standards (parts 23, 25, 27 and 29), subpart B of each is titled Flight.

standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

FAA Response: The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

Comment Summary: ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

FAA Response: The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

Comment Summary: ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

FAA Response: The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

Pilot Ratio

Comment Summary: ALPA and one individual questioned the safety of multiple Model M2 UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

FAA Response: These airworthiness criteria are specific to the Model M2 UA and, as discussed previously in this preamble, operations of the Model M2 UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

Comment Summary: ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

FAA Response: The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

Noise

Comment Summary: An individual commenter expressed concern about noise pollution.

FAA Response: The Model M2 will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

Operating Altitude

Comment Summary: ALPA, McMahon Helicopter Services, and NAAA commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping.

FAA Response: The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

Guidance Material

Comment Summary: NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

FAA Response: The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop

means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

Safety Management

Comment Summary: ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

FAA Response: The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

Process

Comment Summary: ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

FAA Response: As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in parts 23, 25, 27, or 29.

Out of Scope Comments

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Matternet Model M2 UA. Should Matternet wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

Conclusion

This action affects only certain airworthiness criteria for the Matternet Model M2 UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701–44702, 44704.

Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Matternet Model M2 unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function,

reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cybersecurity

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;
(2) Flight durations;
(3) Route complexity;
(4) Weight;
(5) Center of gravity;
(6) Density altitude;
(7) Outside air temperature;
(8) Airspeed;
(9) Wind;
(10) Weather;
(11) Operation at night, if requested;
(12) Energy storage system capacity; and
(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;
(2) C2 link;
(3) Global Positioning System (GPS);
(4) Flight control components with a single point of failure;
(5) Control station; and
(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on February 16, 2022.

Ian Lucas

Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–03867 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–1041; Special Conditions No. 25–805–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Side Stick Controllers—Controllability and Maneuverability.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 6X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is side-stick controllers for pitch and roll control. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on February 25, 2022. Send comments on or before April 11, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2020–1041 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 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.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S. Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On July 1, 2012, Dassault applied for a type certificate for its new Model Falcon 5X airplane. However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for its Model Falcon 5X airplane under new Model Falcon 6X. This airplane is a twin-engine business jet with seating for 19 passengers, and has a maximum takeoff weight of 77,460 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 6X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Model Falcon 6X airplane will incorporate the following novel or unusual design feature:

Side-stick controllers for pitch and roll control.

Discussion

Current part 25 airworthiness regulations account for conventional wheel-and-column airplane controls. Regulatory requirements pertaining to conventional wheel-and-column controls, such as pilot strength and controllability, are not directly applicable to side-stick controls. In addition, pilot-control authority may be uncertain because the side sticks are not mechanically interconnected to controlled surfaces, as are conventional wheel and column controls.

Current FAA regulations do not specifically address the use of side-stick controllers for pitch and roll control. The unique features of the side stick must therefore be demonstrated through flight and simulator tests to have suitable handling and control characteristics when considering the following:

1. The handling-qualities tasks and requirements of the Dassault Falcon Model 6X airplane Special Conditions and other 14 CFR part 25 requirements for stability, control, and maneuverability, including the effects of turbulence.

2. *General ergonomics:* Armrest comfort and support, local freedom of movement, displacement angle suitability, and axis harmony.

3. Inadvertent input in turbulence.

4. Inadvertent pitch-roll crosstalk.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one

model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 6X airplane.

1. *Pilot strength:* In lieu of the control force limits shown in § 25.143(d) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.143(i)(2), 25.145(b), 25.173(c), 25.175(b), and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

2. *Pilot-control authority:* The electronic side-stick-controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided, and must not be confusing to the flightcrew.

3. *Pilot control:* It must be shown by flight tests that the use of side-stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

4. *Autopilot quick-release control location:* In lieu of compliance with 25.1329(d), autopilot quick-release (emergency) controls must be on both side-stick controllers. The quick-release means must be located so that flight crew can readily and easily use the release mechanism.

Issued in Kansas City, Missouri, on February 17, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–03866 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0149; Project Identifier MCAI–2022–00121–Q; Amendment 39–21960; AD 2022–05–09]

RIN 2120–AA64

Airworthiness Directives; MARS A.S. Parachutes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MARS A.S. emergency parachutes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the length of the ripcord between the pins being too long, which could cause a malfunction of the emergency parachute. This AD requires removing emergency parachutes with certain manufacture dates or serial numbers from service. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2022.

The FAA must receive comments on this AD by April 11, 2022.

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

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

For service information identified in this AD, contact MarS a.s., Okružní II 239, 569 43 Jevíčko, Czech Republic; phone: +420 461 353 841; email: *mars@marsjev.cz;* website: *https://www.marsjev.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0149; 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 MCAI, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, COS Program Manager, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (516) 228–7323; email: *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0018–E, dated January 28, 2022 (referred to after this as ''the MCAI''), to address an unsafe condition on certain MARS A.S. ATL–88/90–1B (commercially known as ATL–15 SL) emergency parachutes. The MCAI states:

> During the yearly inspection of one of the affected emergency parachutes, it has been found that the length of the ripcord between the pins was too large and, in some cases, only one of 2 loops of the parachute could be opened when the manual ripcord was pulled. Subsequent inspection revealed that the dimensions of the static line extension were out of production tolerances. It is expected that the manufacturer will develop a modification to restore the airworthiness of affected emergency parachutes.
>
> This condition, if not corrected, could cause a malfunction of the emergency parachute.
>
> To address this unsafe condition EASA issued Emergency AD 2022–0017–E to require removal from service of the affected emergency parachutes.
>
> Since that [EASA] AD was issued, it was determined that the Applicability of that [EASA] AD was incorrect.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA Emergency AD 2022–0017–E, which is superseded, but with a different Applicability.
>
> This [EASA] AD is considered to be an interim measure and further [EASA] AD action may follow.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0149.

Related Service Information

The FAA reviewed MarS a.s. letter titled ''Information for dealers and users of the ATL–15 SL emergency parachute (ATL–88/90–1B),'' dated January 27, 2022. This letter provides information for identifying and suspending the use of affected emergency parachutes, which have an extension of static line made of Microline cord that was manufactured outside of production tolerances.

AD Requirements

This AD applies to emergency parachutes with certain manufacture dates or serial numbers and requires removing those emergency parachutes from service.

Differences Between This AD and the MCAI

The MCAI requires storing emergency parachutes in the unrigged condition in storage containers and visibly mark those storage containers with the words ''Parachute not airworthy. Do not use until further notice,'' while this AD requires removing the emergency parachutes from service.

This AD also requires removing from service any emergency parachute where the serial number or manufacture date is unknown, and the MCAI does not include that requirement.

Interim Action

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

FAA's Justification 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 waiving notice and comment prior to adoption of this rule because failure of an emergency parachute to deploy when needed will lead to the parachutist freefalling to the surface without being slowed, resulting in serious injury or death. Thus, the affected parachutes must be removed from service as of the effective date of this AD. 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).

The FAA has also found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because there are no affected emergency parachutes used in the United States and thus, it is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operators. Accordingly, notice and opportunity for prior public comment are unnecessary 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 forego notice and comment.

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–2022–0149 and Project Identifier MCAI–2022–00121–Q'' 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Darren Gassetto, COS Program Manager, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD does not affect any emergency parachutes used in the United States. According to the manufacturer, none of the affected emergency parachutes were sold through its distributors in the United States. In the event an affected emergency parachute is brought into the United States, the following is an estimate of the costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Remove emergency parachute from service.	0.5 work-hour × $85.00 per hour = $42.50.	Not Applicable	$42.50

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:

2022–05–09 MARS A.S.: Amendment 39–21960; Docket No. FAA–2022–0149; Project Identifier MCAI–2022–00121–Q.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MARS A.S. ATL–88/90–1B (commercially known as ATL–15 SL) emergency parachutes with an extension of static line made of Microline cord and that meet any of the criterion in paragraph (c)(1), (2), or (3) of this AD:

(1) The parachute has a date of manufacture between January 1, 2016, and December 31, 2020, inclusive;

(2) The parachute has a serial number (S/N) 2145001 through S/N 2145005 inclusive, and S/N 2145023 through S/N 2145034 inclusive; or

(3) The date of manufacture or the S/N of the parachute is unknown.

(d) Subject

Joint Aircraft System Component (JASC) Code 2563, Parachute.

(e) Unsafe Condition

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the length of the ripcord between the pins being too long, which could cause a malfunction of the emergency parachute. The unsafe condition, if not addressed, could result in failure of the emergency parachute to deploy when needed.

(f) Compliance

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

(g) Remove From Service

As of the effective date of this AD, remove each emergency parachute from service.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *9-AVS-AIR-BACO-COS@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Darren Gassetto, COS Program Manager, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (516) 228–7323; email: *9-AVS-AIR-BACO-COS@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) Emergency AD 2022–0018–E, dated January 28, 2022, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0149.

(k) Material Incorporated by Reference

None.

Issued on February 18, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–04098 Filed 2–23–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1102; Airspace Docket No. 21–ASW–24]

RIN 2120–AA66

Amendment of the Class E Airspace; Corsicana, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Corsicana, TX. This action is the result of an airspace review as part of the decommissioning of the Powell non-directional beacon (NDB). The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400F.11 is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 70059; December 9, 2021) for Docket No. FAA–2021–1102 to amend the Class E airspace at Corsicana, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (increased from a 6.5-mile) radius of C. David Campbell Field-Corsicana Municipal Airport, Corsicana, TX; removes the Powell NDB and associated extensions from the airspace legal description; removes the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review as part of the decommissioning of the Powell NDB which provided guidance to instrument procedures at this airport.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASW TX E5 Corsicana, TX [Amended]

C. David Campbell Field-Corsicana Municipal Airport, TX
(Lat. 32°01′41″ N, long. 96°24′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of C. David Campbell Field-Corsicana Municipal Airport.

Issued in Fort Worth, Texas, on February 22, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–03995 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Chapter VII

[Docket No: USAF–2021–HQ–0001]

RIN 0701–AA94

Appointment to the United States Air Force Academy; Correction

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; correction.

SUMMARY: Department of the Air Force (DAF) is correcting a final rule that

appeared in the **Federal Register** on December 17, 2021, Appointment to the Air Force Academy. This document corrects the RIN number from 0701–AA81 to 0701–AA94.

DATES: This correction is effective February 25, 2022.

FOR FURTHER INFORMATION CONTACT: Adriane S. Paris, Department of the Air Force Federal Register Office, (703) 614–8500.

SUPPLEMENTARY INFORMATION: In FR Doc. 2021–27304, appearing on page 71570 in the **Federal Register** of Friday, December 17, 2021, in the first column, the RIN is corrected to read ''0701–AA94.''

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–03461 Filed 2–24–22; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211217–0262; RTID 0648–XB829]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to VA

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2022 commercial summer flounder quota to the Commonwealth of Virginia. This adjustment to the 2022 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2022 commercial quotas for North Carolina and Virginia.

DATES: Effective February 23, 2022, through December 31, 2022.

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 648.110. 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 final 2022 allocations were published on December 23, 2021 (86 FR 72859).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (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: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 12,259 lb (5,561 kg) to Virginia through mutual agreement of 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 2022 are: North Carolina, 3,349,310 lb (1,519,221 kg) and Virginia, 2,788,501 lb (1,264,843 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), 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: February 18, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–03917 Filed 2–23–22; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 211217–0262; RTID 0648–XB830]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NY to MA

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of New York is transferring a portion of its 2022 commercial summer flounder quota to the Commonwealth of Massachusetts. This adjustment to the 2022 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2022 commercial quotas for New York and Massachusetts.

DATES: Effective February 23, 2022, through December 31, 2022.

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 648.110. 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 final 2022 allocations were published on December 23, 2021 (86 FR 72859).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (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: The transfer or

combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

New York is transferring 1,944 lb (882 kg) to Massachusetts through mutual agreement of the states. This transfer was requested to repay landings made by a vessel with landing privileges in both states that landed catch in Massachusetts in excess of the state limit under a safe harbor agreement when weather prevented the vessel from landing in the intended New York port. The revised summer flounder quotas for 2022 are: New York, 1,468,835 lb (666,252 kg) and Massachusetts, 1,393,790 lb (632,213 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), 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: February 17, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–03918 Filed 2–23–22; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210723–0150; RTID 0648–XB805]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Possession and Trip Limit Increases for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action increases the possession and trip limits of Gulf of Maine cod, Cape Cod/Gulf of Maine yellowtail flounder, and witch flounder for Northeast multispecies common pool vessels for the remainder of the 2021 fishing year. This action will provide the common pool fishery greater opportunity to harvest, but not exceed, the annual quotas for these stocks.

DATES: These possession and trip limit adjustments are effective February 24, 2022, through April 30, 2022.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels in order to help avoid overharvest or underharvest of the common pool quotas.

Based on the most recent catch information, the common pool fishery has caught low amounts of the following species relative to the annual quotas for each of these stocks (Table 1): Gulf of Maine (GOM) cod; Cape Cod (CC)/GOM yellowtail flounder; and witch flounder. At the current rate of fishing, we project that the common pool fishery will not fully harvest the annual quotas for these stocks by the end of fishing year 2021. Providing vessels an opportunity to possess and land greater amounts of catch should provide greater incentive to fish and more opportunity to catch available quota. Based on our review of past fishing effort and performance under various possession and trip limits, we project that this action's increases in the possession and trip limits for these stocks should provide additional fishing opportunities and flexibility to facilitate catching available quota while ensuring that the common pool does not exceed its annual quotas.

TABLE 1—SUMMARY OF COMMON POOL CATCH THROUGH JANUARY 18, 2022

Stock	FY 2021 catch (mt)	Sub-ACL (mt)	Percent caught
GOM cod	2.6	8.2	31.4
CC/GOM yellowtail flounder	14.8	41.4	35.7
Witch flounder	20.3	44.2	46

Effective February 24, 2022, until April 30, 2022, NMFS increases the possession and trip limits summarized in Tables 2 and 3.

TABLE 2—PREVIOUS FY 2021 POSSESSION AND TRIP LIMITS

Stock	A Days-at-Sea (DAS)	Handgear A	Small vessel category	Handgear B
GOM cod	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip.	100 lb (45.4 kg) per trip.		25 lb (11.3 kg) per trip.
CC/GOM yellowtail flounder.	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.	1,000 lb (453.6 kg) per trip.	300 lb (136.1 kg) per trip.	1,000 lb (453.6 kg) per trip.
Witch flounder	1,500 lb (680.4 kg) per trip.			

TABLE 3—NEW FY 2021 POSSESSION AND TRIP LIMITS

Stock	A Days-at-Sea (DAS)	Handgear A	Small vessel category	Handgear B
GOM cod	200 lb (90.7 kg) per DAS, up to 400 lb (181.4 kg) per trip.	200 lb (90.7 kg) per trip.		25 lb (11.3 kg) per trip.
CC/GOM yellowtail flounder.	1,500 lb (680.4 kg) per DAS, up to 3,000 lb (1,360.8 kg) per trip.	1,500 lb (680.4 kg) per trip.	300 lb (136.1 kg) per trip.	1,500 lb (680.4 kg) per trip.
Witch flounder	2,000 lb (907.2 kg) per trip.			

Weekly quota monitoring reports for the common pool fishery can be found on our website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, Vessel Monitoring System catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act consistent with 50 CFR 648.86(o), which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866. The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because this action relieves possession and landing restrictions, and delayed implementation would be impracticable and contrary to the public interest.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels in order to help avoid overharvest or underharvest of the common pool quotas. Our analysis indicates that this action's increased possession and trip limit adjustments for these stocks should help the fishery achieve catching the allocated amounts for each stock. Any delay in this action would limit the benefits to common pool vessels that the increased landing and possession limits are intended to provide.

The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would keep NMFS from implementing the necessary possession and trip limit before the end of the fishing year on April 30, 2022, which could prevent the fishery from catching the allocated amounts for each stock and cause negative economic impacts to the common pool fishery. This would undermine management objectives of the Northeast Multispecies Fishery Management Plan and cause unnecessary negative economic impacts to the common pool fishery. The public received prior notice and an opportunity to comment on the Regional Administrator's exercise of this authority. The fishing industry participants have experienced these adjustments and have become accustomed to this process. There is additional good cause to waive the delayed effective period because this action relieves restrictions on fishing vessels by increasing a trip limit.

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

Dated: February 17, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–03921 Filed 2–23–22; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 38
Friday, February 25, 2022

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0006]

RIN 1904–AD87

Energy Conservation Program: Energy Conservation Standards for External Power Supplies, Webinar and Availability of the Preliminary Technical Support Document

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

ACTION: Notification of a webinar and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (''DOE'' or ''the Department'') will hold a webinar to discuss and receive comments on the preliminary analysis it has conducted for purposes of evaluating energy conservation standards for external power supplies (''EPSs''). The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of energy conservation standards for EPSs. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (''TSD''), and briefing materials, which are available on the DOE website at: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=1.*

DATES:

Comments: Written comments and information will be accepted on or before, April 26, 2022.

Meeting: DOE will hold a webinar on Thursday, March, 24, 2022, from 1:00 p.m. to 4:00 p.m. See section IV, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0006, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* To *EPS2020STD006@ee.doe.gov.* Include docket number EERE–2020–BT–STD–0006 in the subject line of the message.

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

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

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-STD-0006.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Nisha R. Kumar, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8625. Email: *Nisha.kumar@hq.doe.gov.*

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

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. External power supplies (''EPSs''), the subject of this document, are among the products addressed by these provisions. (42 U.S.C. 6291(36); 42 U.S.C. 6293(b)(17); 42 U.S.C. 6295(u))

EPCA, as amended by the Energy Independence and Security Act of 2007, Public Law 110–140 (''EISA''), also defined a subset of EPSs, called Class A EPSs—devices that are ''able to convert to only 1 AC or DC output voltage at a time'' and have ''nameplate output power that is less than or equal to 250 watts'' among other characteristics.[3] (42 U.S.C. 6291(36)(C)(i)) EPCA prescribed energy conservation standards for Class A EPSs (hereafter referred to as the ''Level IV standards,'' the nomenclature of which is based on the marking required in accordance with the International Efficiency Marking Protocol) for which compliance was required beginning July 1, 2008. (42 U.S.C. 6295(u)(3)(A)) EPCA also directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(u)(3)(D))

Following the EISA amendments, Congress further amended EPCA to exclude EPSs used for certain security and life safety alarms and surveillance systems manufactured prior to July 1, 2017, from the statutorily-prescribed ''no-load'' energy conservation standards. (Pub. L. 111–360 (January 4, 2011) (codified at 42 U.S.C. 6295(u)(3)(E)).

EPCA's EPS provisions were again amended by the Power and Security Systems (''PASS'') Act, which extended the rulemaking deadline and effective date established under the EISA amendments for the second rulemaking cycle from July 1, 2015, and July 1, 2017, to July 1, 2021, and July 1, 2023, respectively. (Pub. L. 115–78 (November 2, 2017) (codified at 42 U.S.C. 6295(u)(3)(D)(ii))). The PASS Act also extended the exclusion of certain security and life safety alarms and surveillance systems from no-load standards until the effective date of the final rule issued under 42 U.S.C. 6295(u)(3)(D)(ii) and allows the Secretary to treat some or all EPSs designed to be connected to a security or life safety alarm or surveillance system as a separate product class or to further extend the exclusion. (42 U.S.C. 6295(u)(3)(E)(ii) and (iv))

On January 12, 2018, the EPS Improvement Act of 2017, Public Law 115–115, amended EPCA to exclude the following devices from the EPS definition: Power supply circuits, drivers, or devices that are designed exclusively to be connected to and power (1) light-emitting diodes providing illumination, (2) organic light-emitting diodes providing illumination, or (3) ceiling fans using direct current motors.[4] (42 U.S.C. 6291(36)(A)(ii))

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE completed the first of the two required rulemaking cycles in 2014 by adopting amended performance standards for EPSs manufactured on or after February 10, 2016. 79 FR 7845 (February 10, 2014) (setting amended standards to apply starting on February 10, 2016) (''February 2014 Final Rule'').

DOE is publishing this Preliminary Analysis to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including EPSs. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) The Secretary may not prescribe an amended or new standard that will not result in significant conservation of energy, or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3))

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in EPCA, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.''

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[5] For example, the United States rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse (''GHG'') emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emissions have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

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

[3] Congress also excluded certain devices from the Class A EPS definition, specifically certain devices requiring listing and approval as a medical device and devices that either (1) power the charger of a detachable battery pack or (2) charge the battery of a product that is fully or primarily motor operated. (*See* 42 U.S.C. 6291(36)(C)(ii))

[4] DOE amended its regulations to reflect the changes introduced by the PASS Act and EPS Improvement Act. 84 FR 437 (January 29, 2019).

[5] *See* 86 FR 70892 (December 13, 2021).

of energy savings, DOE considers differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered EPSs when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE is evaluating the significance of energy savings on a case-by-case basis. In doing this evaluation, DOE will review the amount of FFC savings, the corresponding reduction in GHG emissions, and the need to confront the global climate crisis. DOE has initially determined the energy savings for the candidate standard levels evaluated in this preliminary analysis rulemaking are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy Use Analysis.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Analysis. • Energy Use Analysis. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[6] • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of

[6] Currently, in compliance with the preliminary injunction issued on February 11, 2022, in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.), DOE is not monetizing the costs of greenhouse gas emissions.

energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007, Public Law 110–140 (December 19, 2007), any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and energy conservation standards for EPSs address no-load mode (standby mode) energy use.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notification announces the availability of the preliminary Technical Support Document (''TSD''), which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public webinar to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (''ANOPR''). DOE is opting to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize generally the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed further in the following section, prior to this notification of the preliminary analysis, DOE issued a request for information on May 20, 2020 (''May 2020 RFI'') in which DOE discussed the previous EPS energy conservation standards given in the February 2014 Final Rule. 85 FR 30636. In that RFI, DOE requested comment on whether there were changes to the technologies considered as part of the February 2014 Final Rule that would affect potential amended standards and on any aspect of its economic justification analysis. 85 FR 30636, 30639–30648. While DOE received comments on the assumptions employed in the analysis conducted in support of the February 2014 Final Rule (*see, e.g.,* Joint Commenters, Docket EERE–2020–BT–STD–0006, p. 7–8), DOE did not receive comments or data suggesting DOE rely on a different analytical framework from that conducted for the February 2014 Final Rule. As DOE intends to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would not introduce an analytical framework different from that on which comment was requested in the May 2020 RFI and on which comment was received. As such, DOE is not publishing a framework document.

Further, section 6(d)(2) of appendix A specifies that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to instead provide a 60-day comment period.

As stated, DOE requested comment in the May 2020 RFI on the analysis conducted in support of the February 2014 Final Rule and provided stakeholders a 75-day comment period. DOE, however, did not receive comments suggesting a need to substantively change the analytical approach previously taken. Given that the analysis will largely remain the same, and in light of the 75-day comment period DOE has already provided with its May 2020 RFI, DOE has determined that a 60-day comment period is sufficient to enable interested parties to review the tentative methodologies and accompanying analysis to develop meaningful comments in response to the preliminary TSD.

II. Background

A. Current Standards

In the February 2014 Final Rule, DOE prescribed the current energy conservation standards for EPSs manufactured on and after February 10, 2016. 79 FR 7846. These standards are set forth in DOE's regulations at 10 CFR 430.32(w) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Basic Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤ 0.100
1 W < $P_{out} \leq$ 49 W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.67$	≤ 0.100
49 W < $P_{out} \leq$ 250 W	≥ 0.880	≤ 0.210
P_{out} > 250 W	≥ 0.875	≤ 0.500

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR EXTERNAL POWER SUPPLIES—Continued

Nameplate output power (P_{out})	Minimum average efficiency in active mode (expressed as a decimal)	Maximum power in no-load mode [W]
Single-Voltage External AC–DC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≤0.100
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≤0.100
49 W < $P_{out} \leq 250$ W	≥0.870	≤0.210
$P_{out} > 250$ W	≥0.875	≤0.500
Single-Voltage External AC–AC Power Supply, Basic-Voltage		
$P_{out} \leq 1$ W	$\geq 0.5 \times P_{out} + 0.16$	≤0.210
1 W < $P_{out} \leq 49$ W	$\geq 0.071 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.67$	≤0.210
49 W < $P_{out} \leq 250$ W	≥0.880	≤0.210
$P_{out} > 250$ W	≥0.875	≤0.500
Single-Voltage External AC–AC Power Supply, Low-Voltage		
$P_{out} \leq 1$ W	$\geq 0.517 \times P_{out} + 0.087$	≤0.210
1 W < $P_{out} \leq 49$ W	$\geq 0.0834 \times \ln(P_{out}) - 0.0014 \times P_{out} + 0.609$	≤0.210
49 W < $P_{out} \leq 250$ W	≥0.870	≤0.210
$P_{out} > 250$ W	≥0.875	≤0.500
Multiple-Voltage External Power Supply		
$P_{out} \leq 1$ W	$\geq 0.497 \times P_{out} + 0.067$	≤0.300
1 W < $P_{out} \leq 49$ W	$\geq 0.075 \times \ln(P_{out}) + 0.561$	≤0.300
$P_{out} > 49$ W	≥0.860	≤0.300

B. Current Process

On May 20, 2020, DOE published the May 2020 RFI, initiating a review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for EPSs. 85 FR 30636. Specifically, through the published notice and request for information, DOE sought data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) Would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=1.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose amended energy conservation standards. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (''NIA''). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) A determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that

technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns. 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, meets one or more of the listed five screening criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of EPSs. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (''MSP'') by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the product distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered product.

See Chapter 5 of the preliminary TSD for additional detail on the engineering analysis.

D. Markups Analysis

At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margins. The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups, and includes sales taxes) in the distribution chain to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[7]

Chapter 6 of the preliminary TSD provides details on DOE's development of markups for EPSs.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of EPSs at different efficiencies in representative U.S. homes and business, and to assess the energy savings potential of increased EPS efficiency. The energy use analysis estimates the range of energy use of EPSs as they are actually used by consumers to establish a distribution of efficiencies. The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, and sales tax) plus operating costs (expenses for energy use). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

G. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels).[8] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of EPSs sold from 2027 through 2056.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections (''no-new-standards case''). The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy

[7] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run. Chapter 6 of the preliminary analysis TSD provides more detail about DOE's assumption for incremental markups.

[8] The NIA accounts for impacts in the 50 states and U.S. territories.

conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of product with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates.

DOE estimates a combined total of 0.9 quads of site energy savings at the max-tech efficiency levels for EPSs. Combined site energy savings at Efficiency Level 1 for all product classes are estimated to be 0.05 quads.

Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites public participation in this process through participation in the webinar and submission of written comments and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the standards for EPSs need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by that rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date for the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit such request to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in the preliminary assessment, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE invites all interested parties, regardless of whether they participate in the webinar, to submit in writing by April 26, 2022, comments and information on matters addressed in this notification and on other matters relevant to DOE's consideration of amended energy conservations standards for EPSs. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed

properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

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

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

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

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

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

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

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of a webinar and availability of preliminary technical support document.

Signing Authority

This document of the Department of Energy was signed on February 7, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 17, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–03850 Filed 2–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0041]

RIN 1904–AE57

Energy Conservation Program: Test Procedure for Commercial Warm Air Furnaces

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for commercial warm air furnaces (''CWAFs'') to incorporate the latest versions of the industry standards that are currently incorporated by reference. DOE also proposes to establish a new metric, Thermal Efficiency Two (''TE2''), and corresponding test procedure. Use of the newly proposed test procedure would become mandatory at such time as compliance with amended energy conservation standards based on TE2 is required, should DOE adopt such standards. DOE also proposes additional specifications for CWAFs with multiple vent hoods or small-diameter vent hoods. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than April 26, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Tuesday, March 29, 2022, from 1:00 p.m. to 5:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket

number EERE–2019–BT–TP–0041, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *Furnaces2019TP0041@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0041 in the subject line of the message.

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

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

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

The docket web page can be found at *www.regulations.gov/document?D=EERE-2019-BT-TP-0041-0001.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 567–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standards into 10 CFR part 431:

American National Standards Institute (''ANSI'') Z21.47–2021, ''Gas-fired Central Furnaces'';

ANSI/The American Scociety of Mechanical Engineers (''ASME'') PTC 19.3–1974 (R2004), ''Part 3: Temperature Measurement, Instruments and Apparatus'';

ANSI/American Society of Heating, Refrigeration, and Air-conditioning Engineers (''ASHRAE'') Standard 103–2017, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'';

Copies of ANSI Z21.47–2021, ANSI/ASME PTC 19.3–1974 (R2004) and ANSI/ASHRAE 103–2017, can be obtained from American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org.*

Underwriters Laboratories (''UL'') standard UL 727–2018 ''Standard for Safety Oil-Fired Central Furnaces'';

Copies of UL 727–2018 can be obtained from Underwriters Laboratories, Inc., 2600 NW, Lake Rd., Camas, WA 98607–8542, (360) 817–5500 or online at: *standardscatalog.ul.com.*

ANSI/Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') 1500–2015 ''Performance Rating of Commercial Space Heating Boilers'';

Copies of AHRI 1500–2015 can be obtained from Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or online at: *ahrinet.org.*

ANSI/ASTM E230/E230M–17 ''Standard Specification for Temperature-Electromotive Force (emf) Tables for Standardized Thermocouples'';

ASTM D240–09 ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter'';

ASTM D396–14a ''Standard Specification for Fuel Oils'';

ASTM D4809–09a ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)'';

ASTM D5291–10 ''Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants'';

Copies of ANSI/ASTM E230/E230M–17, ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, and ASTM D5291–10, and can be obtained from ASTM, International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786 or by going online at: *www.astm.org.*

National Fire Protection Association (''NFPA'') 97–2003 ''Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances''.

Copies of NFPA 97–2003 can be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471, (617) 770–3000 or by going online at: *www.nfpa.org.*

For a further discussion of these standards, see section IV.M of this document.

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I. Authority and Background

CWAFs are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(J)) DOE's energy conservation standards and test procedures for CWAFs are currently prescribed at subpart D of part 431 of title 10 of the Code of Federal Regulations (''CFR''). The following sections discuss DOE's authority to establish test procedures for CWAFs and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6311–6317) This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(1)(J))

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

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D); 42 U.S.C. 6297(d))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedure for CWAFs be those generally accepted industry testing procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden, in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including CWAF, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

If the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(ii))

B. Background

DOE's current test procedure for CWAFs is codified at 10 CFR 431.76, ''Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.'' The currently applicable test procedure incorporates by reference two industry standards for testing gas-fired CWAFs: American National Standards Institute (''ANSI'') Z21.47–2012, ''Standard for Gas-fired Central Furnaces'' (''ANSI Z21.47–2012''), which is used for all types of gas-fired CWAFs; and ANSI/American Society of Heating, Refrigeration, and Air-conditioning Engineers (''ASHRAE'') Standard 103–2007, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (''ANSI/ASHRAE 103–2007''), which is specifically used for testing condensing gas-fired CWAFs. 10 CFR

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

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

431.76 (c)(1), (d)(2), (e)(1), and (f)(1);10 CFR 431.75(b)(1) and (c)(1). The current test procedure also incorporates by reference two industry standards for testing oil-fired CWAFs: Hydronics Institute Division of AHRI (''HI'') BTS–2000 Rev 06.07, ''Method to Determine Efficiency of Commercial Space Heating Boilers'' (''HI BTS–2000'') [3] and Underwriters Laboratories (''UL'') UL 727–2006, ''Standard for Safety Oil-Fired Central Furnaces'' (''UL 727–2006'').[4] 10 CFR 431.76(c)(2), (d)(1), and (e)(2); 10 CFR 471.75(d)(1) and (e)(2).

DOE most recently amended the test procedure for CWAFs in a final rule published on July 17, 2015, which updated the test procedure for gas-fired CWAFs to incorporate by reference the latest versions of the industry standards available at the time (*i.e.,* ANSI Z21.47–2012 and ANSI/ASHRAE 103–2007). 80 FR 42614 (''July 2015 final rule''). At the time of the July 2015 final rule, UL 727–2006 and HI BTS–2000 were still the most recent versions of those industry standards.

On May 5, 2020, DOE published a request for information (''RFI'') soliciting public comments, data, and information on aspects of the existing DOE test procedure for CWAFs, including whether there are any issues with the current test procedure and whether it is in need of updates or revisions. 85 FR 26626 (''May 2020 RFI'').

DOE received comments in response to the May 2020 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE MAY 2020 RFI

Commenter(s)	Reference in this NOPR	Commenter type
Appliance Standards Awareness Project	ASAP	Efficiency Organization.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison, and San Diego Gas and Electric Company (collectively, the ''California Investor-Owned Utilities'').	CA IOUs	Utility Organization.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Trade Association.
American Public Gas Association	APGA	Trade Association.
Carrier Corporation	Carrier	Manufacturer.
Trane Technologies	Trane	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for a test procedure rulemaking. *See* 86 FR 70892 (Dec. 13, 2021) (effective January 12, 2022). Section 8(b) of appendix A states if DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it will provide further opportunities for early public input through **Federal Register** documents, including notices of data availability and/or RFIs. DOE is opting to deviate from this provision due to the substantial feedback and information supplied by commenters in response to the May 2020 RFI.

As discussed in section I.B of this NOPR, the May 2020 RFI requested submission of such comments, data, and information pertinent to test procedures for CWAFs. In response to the May 2020 RFI, stakeholders provided substantial comments and information, which DOE has found sufficient to identify the need to modify the test procedures for CWAFs. Section III of this NOPR discusses in detail the comments received and how early stakeholder feedback has been considered in forming DOE's proposals to amend the CWAF test procedure.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update its test procedures for CWAFs as follows:

(1) Reorganize the setup and testing provisions in 10 CFR 431.76 related to the determination of thermal efficiency into the newly established 10 CFR part 431, subpart D, appendix A (''appendix A'');

(2) Incorporate by reference the most recent versions of the currently referenced industry standards:

- UL 727–2018 (previously UL 727–2006) for testing oil-fired CWAFs;
- AHRI 1500–2015 (previously HI BTS–2000) for performing fuel oil analysis and for calculating flue loss of oil-fired CWAFs;
- ANSI Z21.47–2021 (previously ANSI Z21.47–2012) for testing gas-fired CWAFs; and
- ANSI/ASHRAE 103–2017 (previously ANSI/ASHRAE 103–2007) for testing condensing gas-fired CWAFs;

(3) Incorporate by reference the standards referenced in UL 727–2018 (*i.e.,* NFPA 97–2003), AHRI 1500–2015 (*i.e.,* ASTM D396–14a, ASTM D240–09, ASTM D4809–09a, and ASTM D5291–10), and ANSI Z21.47–2021 (*i.e.,* ANSI/ASME PTC 19.3–1974 (R2004)) that are necessary for performing the DOE test procedure;

(4) Clarify how to test units with multiple vent hoods, and units with vent hoods that are 2 inches or smaller in diameter; and

(5) Establish a new test procedure at 10 CFR part 431, subpart D, appendix B (''appendix B''), which would generally require testing as in appendix A, but which would establish a new metric, ''TE2.'' The new TE2 metric would account for jacket losses and part-load operation in addition to accounting for flue losses. If adopted, manufacturers could use proposed new appendix B to make voluntary representations of TE2; this proposed test procedure would become mandatory at such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards.

[3] DOE determined that UL 727–1994 did not provide a procedure for calculating the percent flue loss of the furnace, which is necessary in calculating the thermal efficiency, and therefore incorporated by reference provisions from HI BTS–2000 to calculate the flue loss for oil-fired CWAFs. 69 FR 61916, 61917, 61940 (Oct. 21, 2004).

[4] UL 727–1994 is also incorporated by reference in 10 CFR 431.75, but is no longer referenced in the test method specified in 10 CFR 431.76, which references only UL 727–2006.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CWAFs. (Docket No. EERE–2019–BT–TP–0041, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURES RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedures	Applicable test procedure	Attribution
References UL 727–2006 for testing oil-fired CWAFs.	Incorporate by reference UL 727–2018 for testing oil-fired CWAFs, and the standards referenced in UL 727–2018 that are necessary in performing the DOE test procedure (*i.e.,* NFPA 97–2003).	Appendix A and appendix B.	Align with industry standard update.
References HI BTS–2000 for performing fuel oil analysis and for calculating flue loss of oil-fired CWAFs.	Incorporate by reference AHRI 1500–2015 for performing fuel oil analysis and for calculating flue loss of oil-fired CWAFs and the standards referenced in AHRI 1500–2015 that are necessary in performing the DOE test procedure (*i.e.,* ASTM D396–14a, ASTM D240–09, ASTM D4809–09a, and ASTM D5291–10).	Appendix A and appendix B.	Align with industry standard update.
References ANSI Z21.47–2012 for testing gas-fired CWAFs.	Incorporate by reference ANSI Z21.47–2021 for testing gas-fired CWAFs, and the standards referenced in ANSI Z21.47–2021 that are necessary in performing the DOE test procedure (*i.e.,* ANSI/ASME PTC 19.3–1974 (R2004)).	Appendix A and appendix B.	Align with industry standard update.
References ANSI/ASHRAE 103–2007 for testing condensing gas-fired CWAFs.	Incorporate by reference ANSI/ASHRAE 103–2017 for testing condensing gas-fired CWAFs.	Appendix A and appendix B.	Align with industry standard update.
Does not specify how to test units with multiple vent hoods.	Adds specifications for units with multiple vent hoods. Measurements made in each vent hood shall be averaged or adjusted using a weighted average, depending on the flue hood face area.	Appendix A and appendix B.	Additional specification to improve consistency and repeatability in testing.
Does not specify how to test units with vent hoods that are too small to fit nine thermocouples.	Adds specifications to address units with small-diameter vent hoods. Units with vent hoods that are 2 inches or smaller in diameter may optionally use 5 thermocouples.	Appendix A and appendix B.	Additional specification to improve consistency and repeatability in testing.
Efficiency metric (TE) only accounts for flue losses and does not account for jacket losses or part-load operation.	Establishes a new metric (TE2) that accounts for flue losses, jacket losses, and part-load operation.	Appendix B	Improve representativeness.

DOE has tentatively determined that the proposed amendments for the test procedure at appendix A described in section III of this document would not alter the measured efficiency of CWAFs, that the proposed test procedures would not be unduly burdensome to conduct, and that the proposed test procedures more accurately produce test results that reflect energy efficiency, energy use, and estimated operating costs of CWAFs during a representative average use cycle.

The additional proposed amendments for the newly proposed appendix B would alter the reported efficiency of CWAFs, as discussed in the relevant section of this document. However, as proposed, testing in accordance with these specific proposed changes would not be required until such time as compliance is required with any amended energy conservation standards based on appendix B.

Discussion of DOE's proposed actions are discussed in detail in section III of this document.

III. Discussion

In the following sections, DOE describes the proposed amendments to the test procedures for CWAFs. DOE seeks input from the public to assist with its consideration of the proposed amendments presented in this document. In addition, DOE welcomes comments on other relevant issues that may not specifically be identified in this document.

A. Scope of Applicability

This rulemaking applies to CWAFs. EPCA defines ''warm air furnace'' as a self-contained oil-fired or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units, but does not include unit heaters and duct furnaces. (42 U.S.C. 6311(11)(A)) DOE codified the statutory definition of ''warm air furnace'' at 10 CFR 431.72. DOE defines a CWAF as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 British thermal units (''Btu'') per hour or more. 10 CFR 431.72.

DOE did not receive any comments in response to the May 2020 RFI related to the scope of the CWAF test procedure or relevant definitions for CWAFs. DOE is not proposing any changes to the scope of equipment covered by its CWAF test procedures, or to the relevant definitions.

B. Updates to Industry Standards

As discussed, DOE currently incorporates by reference in 10 CFR part 431, subpart D, the following industry test procedures: UL 727–2006, HI–BTS 2000, ANSI Z21.47–2012, and ANSI/ASHRAE Standard 103–2007. Updates of each of these test standards have been published since they were incorporated into the current test procedure. These updated test standards are UL 727–2018 (update to UL 727–2006), AHRI 1500–2015 (update to HI–BTS 2000), ANSI Z21.47–2021 [6] (update to ANSI Z21.47–2016), and ANSI/ASHRAE Standard 103–2017 (update to ANSI/ASHRAE Standard 103–2007).

In the May 2020 RFI, DOE noted several differences between the industry standards currently incorporated by reference and the updated industry standards and sought comment on these changes. 85 FR 26626, 26629–26631. Each change in the updated versions of

[6] At the time of the May 2020 RFI publication, ANSI Z21.47–2016 was the most up-to-date version of ANSI Z21.47. Since then, ANSI Z21.47–2021 was published.

each standard and stakeholder comments in response to the May 2020 RFI are discussed in the following sections. DOE did not identify any substantive differences between the currently referenced industry standards and their updated versions that would pertain to the DOE test procedure for CWAFs, other than those discussed in the following sections. In response to the updates to the relevant industry standards, DOE is proposing to amend the Federal test procedure for CWAFs to incorporate by reference in 10 CFR part 431, subpart D, the following updated industry standards: UL 727–2018, AHRI 1500–2015, ANSI Z21.47–2021, and ANSI/ASHRAE 103–2017.

As discussed, the DOE test procedure for CWAFs is specified in 10 CFR 431.76. In this NOPR, DOE is proposing to establish appendix A to subpart D of 10 CFR part 431. DOE is reorganizing the CWAF setup and testing provisions currently proscribed in 10 CFR 431.76 into appendix A to clarify the test provisions that are necessary for determining thermal efficiency. DOE is reorganizing 10 CFR 431.76 in the way because, as discussed in section III.C of this document, DOE is also establishing appendix B for determining the proposed thermal efficiency two metric. DOE has tentatively determined that creating separate appendixes for the determination of the two different metrics would help clarify which appendix corresponds to which metric (*i.e.,* appendix A is for thermal efficiency, while appendix B is for thermal efficiency two). Therefore, the establishment of appendix A is editorial and for reorganization purposes, and appendix A does not deviate from the current DOE test procedure unless specifically discussed in the sections below and in section III.E of this document.

1. UL 727–2006

The CWAF test procedure at 10 CFR 431.76 requires use of those procedures contained in UL 727–2006 that are relevant to the steady-state efficiency measurement (*i.e.,* UL 727–2006 sections 1 through 3; 37 through 42 (except for sections 40.4 and 40.6.2 through 40.6.7); 43.2; and 44 through 46). In the May 2020 RFI, DOE identified two updates in UL 727–2018 relating to the scope and to thermocouple tolerance. 85 FR 26626, 26629–26630. In addition, since the publication of the May 2020 RFI, DOE has identified one additional update in UL 727–2018 related to the definitions incorporated in section 3 of UL 727–2018. These updates, the comments received from stakeholders regarding these updates, and DOE's proposal for each update are discussed in detail in the following sections. As previously mentioned in section III.B of this document, DOE is proposing to amend the DOE test procedure to incorporate by reference UL 727–2018.

a. Scope of UL 727

In the May 2020 RFI, DOE noted that the language in section 1 of the UL 727–2018 test standard regarding the scope of the standard has been changed from that in UL 727–2006. 85 FR 26626, 26630. Section 1.3 in UL 727–2006 references the NFPA ''Standard for Installation of Oil-Burning Equipment,'' NFPA 31, and codes such as the ''Building Officials Code Administrators International National Mechanical Code,'' the ''State Building Code Council Standard Mechanical Code,'' and the ''International Association of Plumbing and Mechanical Officials Uniform Mechanical Code'' for requirements for the installation and use of oil-burning equipment. In contrast, Section 1.3 of UL 727–2018 references the NFPA ''Standard for Installation of Oil-Burning Equipment,'' NFPA 31, the ''International Mechanical Code,'' and the ''Uniform Mechanical Code'' regarding installation and use of oil-burning equipment.

In the May 2020 RFI, DOE explained that DOE defines the scope for the testing of CWAFs in 10 CFR 431.76(a), and that the scope of applicability of the DOE test procedure is independent from the scope defined by UL–727–2006. 85 FR 26626, 26630. Although DOE references the scope of UL 727–2006 in its test provisions at 10 CFR 431.76(c)(2), only the procedures within UL 727–2006 that are pertinent to the measurement of the steady-state efficiency are included in the DOE test procedure. 10 CFR 431.76(b). Therefore, any provisions within the scope of UL 727–2006 that do not relate to the measurement of the steady-state efficiency do not apply to the DOE test procedure.

In the May 2020 RFI, DOE sought comment on whether there is a need to identify more specifically the provisions of UL 727–2006 that apply to the DOE test procedure. *Id.* In response, AHRI recommended the adoption of the most current edition of UL 727 published in 2018 and stated that it does not believe there is a need to identify provisions from the 2006 edition in the DOE test procedure. (AHRI, No. 7 at p. 3)

DOE has tentatively determined that the scope section of UL 727–2018 is inapplicable to the DOE test procedure because the scope of the DOE test procedure is defined separately in 10 CFR 431.76(a), and only the provisions in UL 727–2018 that relate to the measurement of steady-state efficiency apply to the DOE test procedure. While DOE is proposing to incorporate by reference UL 727–2018 in its entirety, DOE is proposing to explicitly identify the provisions of UL 727–2018 that are applicable to the DOE test procedure for CWAF, which would not include the scope section of that industry standard, since the scope of the DOE test procedure is defined separately in 10 CFR 431.76(a).

b. Thermocouple Tolerance

The DOE test procedure currently incorporates Section 40 of UL 727–2006 for the test set-up for oil-fired commercial warm air furnaces. 10 CFR 431.76(c)(2). In the May 2020 RFI, DOE noted that Section 40.6.1 of UL 727–2018, which pertains to temperature measurements using potentiometers and thermocouples, has different language from UL 727–2006 and incorporates different ANSI references. 85 FR 26626, 26629–26630. Specifically, UL 727–2006 specifies that the thermocouple wire must conform to the requirements specified in the Initial Calibration Tolerances for Thermocouples table (*i.e.,* Table 8) in International Society of Automation (''ISA'') standard MC96.1, ''Temperature-Measurement Thermocouples'' (''ANSI/ISA MC96.1''). In contrast, UL 727–2018 states that the thermocouple wire must conform to the requirements specified in the Tolerance on Initial Values of Electromagnetic Force (''EMF'') Versus Temperature tables (*i.e.,* Tables 1–3) in ANSI/ASTM E230/E230M–17 ''Standard Specification for Temperature-Electromotive Force (emf) Tables for Standardized Thermocouples,'' (''ASTM E230/E230M–17''). The thermocouple specifications in ANSI/ISA MC96.1 and ANSI/ASTM E230/E230M–17 are applicable only to the range of temperatures associated with the types of thermocouples specified in each of the industry standards. As discussed in the May 2020 RFI, based on an initial review of ANSI/ASTM E230/E230M–17, the temperature ranges to which the ANSI/ASTM E230/E230M–17 specifications apply differ from the temperature ranges specified in MC96.1 for certain thermocouple wires. Specifically, ANSI/ASTM E230/E230M–17 includes temperature ranges and specifications for thermocouple types C, N, and mineral-insulated metal-sheathed E type, which are not included in ANSI/ISA MC96.1; and tolerances on initial values of EMF versus temperature for extension wires and compensating extension wires in ANSI/ASTM E230/

E230M–17 (*i.e.,* Tables 2 and 3) have been added to Section 40.6.1 of UL 727–2018. *Id.* at 85 FR 26630.

In the May 2020 RFI, DOE asked for comment regarding the changes resulting from UL 727–2018 referencing ANSI/ASTM E230/E230M–17. Specifically, DOE asked for comment on whether the additional references and changes to the thermocouple and thermocouple extension wire requirements would impact the representativeness of the measured test results or test burden of the DOE CWAF test procedure, if adopted. *Id.* DOE also sought comment on why Section 40.6.1 in UL 727 was changed from referencing ANSI/ISA MC96.1 in UL 727–2006, to ANSI/ASTM E230/E230M in UL 727–2018. DOE requested input on the perceived benefits and/or drawbacks of such change. 85 FR 26626, 26630.

AHRI encouraged DOE to evaluate how any additions or changes to the thermocouple and thermocouple extension wire requirements to determine the full impact any differences may have on current products' ability to remain compliant. (AHRI, No. 7 at p. 2) AHRI also commented that ANSI/ISA MC96.1 is an obsolete standard that was last published in 1982 and was administratively withdrawn by ISA in 2011. Additionally, AHRI stated that the ANSI/ASTM E230/E230M–17 standard represents current technologies and is maintained on a periodic basis in accordance with the ASTM standards development procedures. (AHRI, No. 7 at pp. 2–3)

DOE has confirmed that ANSI/ISA MC96.1 was administratively withdrawn by ISA. As the ANSI/ASTM E230/E230M–17 standard is the current industry standard regarding thermocouples, it is expected that thermocouples currently being used for testing meet the specifications of that industry standard. Furthermore, DOE notes that the requirements in ANSI/ASTM E230/E230M–17 allow additional thermocouple wires for testing, in addition to those that were specified in ANSI/ISA MC96.1. Therefore, DOE expects units tested according to the previous requirements in ANSI/ISA MC96.1 would subsequently meet those in ANSI/ASTM E230/E230M–17. DOE received no additional comments on this topic. Absent data and information to indicate that the requirements in ANSI/ASTM E230/E230M–17 are not appropriate or result in a significant change from the provisions in ANSI/ISA MC96.1. DOE has tentatively determined that there is not sufficient evidence to indicate ANSI/ASTME230/E230M–17 would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. Additionally, if DOE were to continue to reference a test procedure that is administratively withdrawn, industry may find it difficult to obtain copies of the obsolete standard. Therefore, DOE is proposing to incorporate the ANSI/ASTM E230/E230M–17 thermocouple provisions referenced in UL 727–2018 (*i.e.,* Tables 1–3 of ANSI/ASTM E230/E230M–17) in the DOE test procedure for CWAFs.

c. NFPA 97–2003

Sections 3.11 and 3.27 of UL 727–2018 state that the definitions of terms ''combustible'' and ''noncombustible'' are the definitions found within NFPA 97M, ''Standard Glossary of Terms Relating to Chimneys, Gas Vents and Heat Producing Appliances'' (''NFPA 97M''). UL 727–2018 does not specify which version of NFPA 97M is being referenced in the standard, nor does it include a publication date of version number of the NFPA 97M standard. The latest version of NFPA 97M of which DOE is aware is a version published in 1967. DOE also notes that NFPA's website does not contain a NFPA 97M publication, and instead contains NFPA 97–2003 ''Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances'' (NFPA 97–2003). NFPA 97–2003 contains definitions for ''combustible material'' and ''noncombustible material,'' however NFPA 97M only contains a definition for ''combustible material.'' DOE notes that there are minor differences between the definitions for ''combustible material'' in both standards, and that DOE tentatively concludes that there are no substantial differences.[7] Further, DOE has tentatively concluded that UL 727–2018 references an outdated standard (NFPA 97M) and should instead reference the most up-to-date industry standard (NFPA 97–2003). Therefore, DOE is proposing to incorporate by reference NFPA 97–2003, and is proposing that the references to NFPA 97M that are relevant to the DOE test procedure (*i.e.,* those made within Sections 3.11 and 3.27 of UL 727–2018) shall instead reference NFPA 97–2003.

DOE seeks comment on its tentative conclusion that NFPA 97M is an outdated standard that has been superseded by NFPA 97–2003. DOE seeks comment on its proposal to incorporate by reference NFPA 97–2003 in 10 CFR part 431, subpart D.

2. HI BTS–2000

DOE's test procedure for oil-fired CWAFs references sections of HI BTS–2000 that are relevant to fuel oil analysis and calculating percent flue loss (*i.e.,* HI BTS–2000 sections 8.2.2, 11.1.4, 11.1.5, and 11.1.6.2). 10 CFR 431.76(c)(2) and (e)(2). DOE's test procedure includes these provisions because DOE has previously determined that UL 727 does not provide a procedure for calculating the percent flue loss of the furnace, which is necessary in calculating the thermal efficiency (''TE''), and therefore incorporated by reference provisions from HI BTS–2000 to calculate the flue loss for oil-fired CWAFs. 69 FR 61916, 61917, 61940.

In 2015, HI BTS–2000 was redesignated by AHRI as AHRI 1500–2015. In the May 2020 RFI, DOE identified two substantive changes in the sections relevant to the DOE test procedure in the update from HI BTS–2000 to AHRI 1500–2015 regarding fuel oil analysis and calculation of flue loss. 85 FR 26626, 26630. DOE requested comment generally regarding whether any of the differences between Sections 8.2.2, 11.1.4, 11.1.5, and 11.1.6.2 of HI BTS–2000 and AHRI 1500–2015 are relevant to the DOE test procedure, and if so, how such differences would impact the representativeness of measurements and the associated test burden of the DOE commercial warm air furnaces test procedure, if adopted. *Id.* at 85 FR 26631. The updates to AHRI 1500–2015, the comments received from stakeholders regarding these updates, and DOE's proposal for each update are discussed in detail in the following paragraphs. As previously mentioned in section III.B of this document, DOE is proposing to amend the DOE test procedure to incorporate by reference AHRI 1500–2015.

a. Fuel Oil Analysis Requirements

DOE's test procedure for oil-fired CWAFs includes fuel oil analysis requirements that reference Section 8.2.2 of HI BTS–2000. 10 CFR 431.76(c)(2). As noted in the May 2020 RFI, Section C3.2.1.1 of AHRI 1500–2015 (previously Section 8.2.2 of HI BTS–2000) specifies different fuel oil

[7] NFPA 97–2003 defines ''combustible material'' as ''material made of or surfaced with wood, compressed paper, plant fiber, plastics, or other material that can ignite and burn, whether flameproofed or not, or whether plastered or unplastered.'' (Section 3.3.44 of NFPA 97–2003) NFPA 97M defines ''combustible material'' as ''combustible material, as pertaining to materials adjacent to or in contact with heat-producing appliances, chimney connectors and vent connectors, steam and hot-water pipes, and warm-air ducts, means material made of or surfaced with wood, compressed paper, plant fibers, or other materials that will ignite and burn. Such material shall be considered as combustible even though flameproofed, fire-retardant treated, or plastered.'' (NFPA 97M, part II, p. 193)

analysis requirements (*i.e.,* heating value analyzed per ASTM D240–09 [8] or ASTM D4809–09a,[9] hydrogen and carbon content analyzed per ASTM D5291–10,[10] and density and American Petroleum Institute (''API'') gravity analyzed per ASTM D396–14a [11]) than are required in Section 8.2.2 of HI BTS–2000 (*i.e.,* heat value, hydrogen and carbon content, density and API gravity analyzed per ASTM D396–90 [12]). 85 FR 26626, 26631.

In the May 2020 RFI, DOE asked for comment regarding the differences between the fuel oil analysis requirements in each standard, whether the differences between the two would yield different results during testing, and whether adopting AHRI 1500–2015 would add or reduce burden to the current testing requirements of the DOE test procedure. 85 FR 26626, 26631.

The CA IOUs encouraged DOE to ensure that fuel oil analysis requirements are consistent across applicable test procedures. (CA IOUs, No. 8 at p. 4) AHRI stated that the two standards show no significant changes and that adoption of AHRI 1500–2015 would not yield different results during testing. AHRI reiterated its support for the adoption of the most current edition of this standard, stating that this edition represents the most current technology and information available at the time of publication, and that HI BTS–2000 is an obsolete standard no longer maintained by AHRI. Furthermore, AHRI stated that it has determined that there is no change in the burden by adopting AHRI 1500–2015. (AHRI, No. 7 at p. 4)

DOE has not received any information or data indicating that updating the HI BTS–2000 reference to AHRI 1500–2015 would result in a test procedure that would not meet the representativeness requirements or be unduly burdensome to conduct. DOE has confirmed that HI BTS–2000 is no longer maintained by AHRI and has tentatively determined that it is an obsolete standard. AHRI 1500–2015 represents the industry's most up to date requirements for fuel oil analysis, and no issues or differences between the new and old standards that would impact results or require retesting have been reported to DOE. Because of this, and based on stakeholder comment, DOE has tentatively determined that incorporating AHRI 1500–2015 into the DOE test procedure would not impact the performance of a CWAF under test or require CWAFs to be retested. Additionally, if DOE were to continue to reference a test procedure that is administratively withdrawn, industry may find it difficult to obtain copies of the obsolete standard. Therefore, DOE has tentatively determined that AHRI 1500–2015, the successor industry standard to the currently referenced HI BTS–2000, contains fuel oil analysis requirements that are equivalent to the requirements in HI BTS–2000 and are currently being used by test facilities. Therefore, DOE is proposing to incorporate by reference AHRI 1500–2015, including its fuel oil analysis specifications.

b. Calculation of Carbon Dioxide in Flue Gas Losses

In the May 2020 RFI, DOE noted that Section 11.1.4 of HI BTS–2000 requires that the carbon dioxide (''CO_2'') value used in the calculation of the dry flue gas loss for oil must be the measured CO_2. 85 FR 26626, 26631. Section C7.2.4 of AHRI 1500–2015 (previously Section 11.1.4 in HI BTS–2000) includes the option to calculate CO_2 using the measured oxygen (''O_2'') value instead of directly measuring the CO_2 value. The DOE test procedure at 10 CFR 431.76(d) requires that CO_2 must be measured.

In the May 2020 RFI, DOE asked for comment on whether the option to calculate CO_2 in AHRI 1500–2015 yields different testing results compared to using the measured value, and whether it should adopt the AHRI 1500–2015 provisions that allow for measuring O_2 and calculating CO_2. *Id.* The CA IOUs stated that measuring CO_2 levels is more accurate than calculating CO_2 levels based on O_2 measurements. The CA IOUs also stated that since certified labs and manufacturers are already equipped to measure CO_2, DOE should maintain the current requirement for direct CO_2 measurements. (CA IOUs, No. 8 at p. 4) AHRI recommended that the option to calculate CO_2 based on a measurement of O_2 be added to the DOE test method. AHRI stated that using a calculated CO_2 yields comparable results and is equivalent using a measured CO_2 value. (AHRI, No. 7 at p. 4)

DOE has identified O_2 sensors on the market that are accurate to within ±0.1 percent, which is equivalent to or greater than the accuracy of the CO_2 sensors used in labs that perform CWAF testing. Therefore, if such O_2 sensors are used to measure O_2 as a means for calculating CO_2, the value of CO_2 obtained through calculation and the value obtained through direct measurement should be comparable. DOE also consulted with independent third-party testing facilities and found that some of these facilities currently use sensors that measure O_2 in the flue gasses and perform an internal calculation to determine CO_2 in the flue gasses. In addition, AHRI 1500–2015 includes the option to directly measure CO_2, so if that option is less burdensome, test facilities would continue to be able to rely on it. DOE has tentatively determined that calculating CO_2 using a measured O_2 value, as specified in AHRI 1500–2015, would provide results equivalent to the CO_2 measurement currently required by the DOE test method, and that allowing a calculated value of CO_2 would harmonize with the latest industry standard without increasing test burden. For these reasons, DOE proposes to incorporate by reference the provisions in AHRI 1500–2015 that provide an optional procedure for measuring CO_2 based on measured O_2 values. DOE also proposes to establish section 3 of appendix A (*i.e.,* an update of 10 CFR 431.76(d) of the current DOE test procedure) to reflect DOE's proposal to allow measuring O_2, and this includes requiring that O_2 measurements are determined with an instrument that has a reading error no greater than ±0.1 percent. DOE notes that Table C1 of AHRI 1500–2017 specifies that O_2 shall be measured with an accuracy no greater than ±0.1 percent, and therefore this proposal aligns with the requirements in the industry standard.

DOE seeks comment on its proposal to adopt the optional method specified in AHRI 1500–2015 that allows for calculating CO_2 using a measured O_2 value. DOE also seeks comment on its proposal to establish section 3 of appendix A (*i.e.,* an update of 10 CFR 431.76(d) of the current DOE test procedure) to accommodate the option to calculate CO_2 using a measured O_2 value.

3. ANSI Z21.47

In the May 2020 RFI, DOE noted that the test method in 10 CFR 431.76 for gas-fired CWAFs requires the use of procedures contained in ANSI Z21.47–2012 that are relevant to the steady-state efficiency measurement (*i.e.,* Sections 1.1, 2.1 through 2.6, 2.39, and 4.2.1 of ANSI Z21.47–2012). 81 FR 26626, 26630. DOE noted that the majority of the test standard provisions relevant to

[8] ASTM D240–09 ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter'' (''ASTM D240–09'').

[9] ASTM D4809–09a ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)'' (''ASTM D4809–09a'').

[10] ASTM D5291–10 ''Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants'' (''ASTM D5291–10'').

[11] ASTM D396–14a ''Standard Specification for Fuel Oils'' (''ASTM D396–14a'').

[12] ASTM D396–90 ''Standard Specification for Fuel Oils'' (''ASTM D396–90'').

DOE's test procedure did not change in the most up-to-date version of the industry standard at that time, ANSI Z21.47–2016. *Id.* The revisions that were made were mostly editorial in nature, including moving Section 2 in ANSI Z21.47–2012 to Section 5 in ANSI Z21.47–2016, among other structural changes. In reviewing the 2012 and 2016 versions of the standard, DOE identified one apparent typographical error in the 2016 version.

Since the publication of the May 2020 RFI, an updated version of the ANSI Z21.47 standard was published in 2021: ANSI Z21.47–2021. DOE notes that the only substantive difference between the 2016 and 2021 versions relevant to the sections referenced by the DOE test procedure is related to burner operating characteristics tests specified in Section 5.4a of both ANSI Z21.47–2016 and ANSI Z21.47–2021.

The updates to ANSI Z21.47–2012 in ANSI Z21.47–2016 and ANSI Z21.47–2021, as well as the scope of the industry standard, are discussed in further detail in the following sections. As previously mentioned in section III.B of this document, DOE is proposing to amend the DOE test procedure to reference ANSI Z21.47–2021, as it is the most recent version of the industry test procedure.

a. Scope of ANSI Z21.47

DOE's test procedure for CWAFs currently includes reference to the scope Section (section 1.1) of ANSI Z21.47–2012. 10 CFR 431.76(c). As previously stated in section III.B.1.a of this document, DOE defines the scope for the testing of CWAFs in 10 CFR 431.76(a), and DOE's test procedure for CWAFs requires use of ANSI Z21.47 only for provisions pertinent to the measurement of the steady-state efficiency.

While DOE is proposing to incorporate by reference ANSI Z21.47–2021 in its entirety, DOE is proposing to explicitly identify the provisions of ANSI Z21.47–2021 that are applicable to the DOE test procedure for CWAFs, which would not include the scope section of that industry standard.

b. Typographical Error

Section 2.3.2(c) of ANSI Z21.47–2012 and the corresponding Section 5.3.2(c) of ANSI Z21.47–2021 provide installation requirements for horizontal furnaces. In the May 2020 RFI, DOE noted that Section 5.3.2(c)(iii) of ANSI Z21.47–2016 appears to contain a typographical error by referencing ''Figure 4, Enclosure types for alcove and closet installation tests for horizontal furnaces.'' 85 FR 26626, 26630. The title of Figure 4 in ANSI Z21.47–2016 is ''Enclosure types for alcove and closet installation tests for up-flow and down-flow furnaces,'' and as titled, Figure 4 applies only to up-flow and down-flow furnaces. It appears that the appropriate reference in Section 5.3.2(c)(iii) of ANSI Z21.47–2016 should be to Figure 5, ''Enclosed types for alcove and closet installation tests for horizontal furnaces.''

In the May 2020 RFI, DOE asked for comment on whether Section 5.3.2(c)(iii) of ANSI Z21.47–2016 should refer to Figure 5 in the test procedure, rather than Figure 4. *Id.* AHRI, Trane, and Carrier all agreed that the reference to Figure 4 was a typographical error, and that Section 5.3.2(c)(iii) of ANSI Z21.47–2016 should refer to Figure 5. (AHRI, No. 7 at p. 3; Trane, No. 9 at p. 2; Carrier, No. 4 at p. 1)

In the update to the industry standard, ANSI Z21.47–2021 corrected this typographical error by having Section 5.3.2(c)(iii) reference Figure 5. Therefore, the typographical error in ANSI Z21.47–2016 is no longer relevant because DOE is now proposing to incorporate by reference ANSI Z21.47–2021.

c. Propane Nomenclature

DOE also asked for comment regarding any differences between ANSI Z21.47–2012 and ANSI Z21.47–2016, and specifically whether there are any differences other than those already identified by DOE in the May 2020 RFI. *Id.* In response to DOE's request for comment regarding any additional differences between ANSI Z21.47–2012 and ANSI Z21.47–2016, AHRI and Trane both noted that in ANSI Z21.47–2016, the term ''propane'' is used in place of the term ''liquified petroleum gas;'' however, the commenters stated that this change is not substantive.[13] (AHRI, No. 7 at p. 3; Trane, No. 9 at p. 2) Carrier did not specifically comment on this nomenclature change, although it stated that there are no additional updates in AHRI Z21.47–2016 that would impact the DOE test procedure, other than those already identified by DOE. (Carrier, No. 4 at p. 1)

DOE notes that ANSI Z21.47–2021 also uses the term ''propane'' in place of ''liquified petroleum gas.'' DOE tentatively agrees with AHRI and Trane that the use of ''propane'' instead of ''liquified petroleum gas'' is for clarification only, and, therefore, does not affect the test procedure. Therefore, DOE is proposing to incorporate by reference ASNI Z21.47–2021 and specify use of the sections that correspond to the sections currently referenced in the DOE test procedure (*i.e.,* Sections 5.1 through 5.6, 5.40, and 7.2.1 of ANSI Z21.47–2021),), including the language referring to ''propane'' instead of ''liquefied petroleum gas.''

d. Burner Operating Characteristics Tests

Section 2.4a of ANSI Z21.47–2012 is referenced in the current DOE test procedure for CWAFs. 10 CFR 431.76(c)(2). This section states that three separate tests (each specified in Sections 2.9.1(a), 2.10.1, and 2.11.3, respectively, of ANSI Z21.47–2012) shall be performed prior to the performance test to ensure that there is no burner flashback and that the ignition system is working properly. Section 2.4a states that these three burner operating characteristics tests shall be conducted with test gas G (*i.e.,* butane-air). ANSI Z21.47–2021 includes a minor alteration to these provisions, which allows for performing these tests with a different test gas. Section 5.4a of ANSI Z21.47–2021 (previously section 2.4a in ANSI Z21.47–2012) states that the burner operating characteristics tests shall be performed with either test gas G or, at the manufacturer's option for testing premixed burners, test gas H (*i.e.,* propane-air). DOE notes that the burner operating characteristics tests, including the test gas used for these tests, do not affect the TE measurement of a CWAF. Therefore, DOE does not have evidence to deviate from the industry test procedure and proposes to adopt Section 5.4 of ANSI Z21.47–2021, including the previsions regarding the use of test gas as an option when performing the burner characteristics tests.

DOE seeks comment on whether the option provided in Section 5.4a of ANSI Z21.47–2021 to use test gas H when performing the three burner characteristics tests would impact the representativeness or burden of the thermal efficiency test.

4. ANSI/ASHRAE 103

In the May 2020 RFI, DOE noted that DOE's test procedure for gas-fired condensing CWAFs references Sections 7.2.2.4, 7.8, 9.2, 11.3.7.1 and 11.3.7.2 of ANSI/ASHRAE Standard 103–2007. 10 CFR 431.76; 85 FR 26626, 26630. DOE did not identify any substantive changes in the sections currently referenced by the DOE test procedure in the update from ANSI/ASHRAE 103–2007 to ANSI/

[13] Trane stated that ANSI Z21.47–2016 uses the term ''propane'' in place of the term ''liquified natural gas''. (Trane, No. 9 at p. 2) However, DOE notes that ANSI Z21.47–2012 uses the term ''liquified petroleum gas,'' not ''liquified natural gas,'' and believes this was what Trane intended to note.

ASHRAE 103–2017; however, DOE asked for comment on whether there were any differences between the two standards that are relevant to the DOE test procedure, and if so, how such differences would impact the representativeness of measurements and the test burden of the DOE test procedure for CWAFs, if adopted. *Id.*

AHRI commented that Sections 11.3.7.1 and 11.3.7.2 in ANSI/ASHRAE 103–2017 were modified to replace a fixed numerical value with mathematical expressions, but that there were no significant changes to the clauses specified in the DOE test procedure. (AHRI, No. 7 at p. 3) Trane stated that equations were modified only in terms from numeric to mathematical, but that this did not change the outcomes of the measurements. (Trane, No. 9 at p. 2)

DOE acknowledges that the two equations in Sections 11.3.7.1 and 11.3.7.2 of ANSI/ASHRAE 103–2017 have been modified. ANSI/ASHRAE 103–2007 includes variables in each equation that are defined as constants in the list of variables below each equation (*e.g.,* latent heat of vaporization equals 1053.3 Btu per pound mass (''Btu/lbm'')); in contrast, ANSI/ASHRAE 103–2017 inserts the constants directly into each equation. DOE has tentatively determined that the changes to the equations referenced by DOE (specifically those in clauses 11.3.7.1 and 11.3.7.2 of ANSI/ASHRAE 103–2017) are editorial in nature and do not change the calculated values. As previously mentioned in section III.B of this document, DOE is proposing to amend the DOE test procedure to reference ANSI/ASHRAE 103–2017, which would include these changes.

C. ''Thermal Efficiency Two'' Metric

As previously discussed, EPCA requires that the test procedures for CWAFs be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure or rating procedure is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden.[14] (42 U.S.C. 6314(a)(4)(B))

As discussed in further detail in the sub-sections that immediately follow, DOE has tentatively determined that a test procedure that includes jacket loss and accounts for part-load operation would better produce test results that reflect energy efficiency, energy use, and estimated operating costs of CWAFs during a representative average use cycle. CWAFs are typically installed outdoors and as a result jacket losses can be a significant source of energy loss. Further, for models with multiple heating stages, performance can vary at the maximum input heating stage as compared to reduced input stage(s). Therefore, DOE is proposing to account for these factors by establishing a new test procedure and metric for CWAFs, termed ''Thermal Efficiency Two'' (''TE2''), which would generally adopt the same changes proposed for the current test procedure at appendix A, but would additionally account for jacket losses and part load operation. The proposed TE2 test procedure would account for flue losses in the same manner as the current TE metric. DOE proposes to establish a new appendix B to 10 CFR part 431, which would contain the test method for TE2.

If adopted, manufacturers would be permitted to make voluntary representations using TE2. Mandatory use of the TE2 test procedure would be required at such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards. DOE is, therefore, also proposing to retain the test method for TE, which is proposed to be modified as discussed elsewhere in this document, in appendix A for use until such time as TE2 becomes mandatory.

DOE seeks comment on its proposal to establish a new test procedure (*i.e.,* appendix B) and metric (*i.e.,* TE2) for CWAFs, which would generally adopt the same changes proposed for the current test procedure at appendix A and account for flue losses in the same manner as the current TE metric, but would additionally account for jacket losses and part load operation.

1. Jacket Loss

As discussed, the current energy efficiency metric for CWAFs is TE. 10 CFR 431.77. TE for a CWAF is defined in 10 CFR 431.72 as 100 percent minus the percent flue loss, and is calculated, as specified in 10 CFR 431.76(e), by following the procedure specified in Section 2.39 of ANSI Z21.47–2012 for gas-fired CWAFs and Sections 11.1.4, 11.1.5, and 11.1.6.2 of HI BTS–2000 for oil-fired CWAFs.[15] A test method and calculations for determining the jacket loss percentage (*i.e.,* the hourly heat loss through the jacket divided by the hourly input and multiplied by 100) are included in Section 2.39 of ANSI Z21.47–2012 (and the corresponding Section 5.40 of ANSI Z21.47–2021), which is referenced in the DOE test procedure. However, the jacket loss percentage is not included in the equation used to calculate TE.[16]

In the May 2020 RFI, DOE requested comment on whether jacket loss should be accounted for in the calculation of TE. Specifically, DOE asked for comment regarding information and data on whether and to what extent inclusion of jacket loss would provide results that would more appropriately reflect energy efficiency during a representative average use cycle, and also information and data as to the test burden that would be associated with potential inclusion of jacket loss as part of the DOE CWAF test procedure. *Id*

ASAP, NEEA,[17] and the CA IOUs each supported adding jacket loss to the TE metric, stating that jacket loss could have a large impact on overall thermal efficiency. (ASAP, No. 5 at p.1; NEEA, No. 10 at p.3; CA IOUs, No. 8 at p.4) Specifically, the CA IOUs stated that furnace jacket losses have significant variations based on the installation configuration (*e.g.,* stand-alone vs. embedded in a commercial unitary air-conditioner (''CUAC'')) and the mode of operation used for testing (*e.g.,* full-load

[14] 42 U.S.C. 6314(a)(2) requires that test procedures be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct. 42 U.S.C. 6314(a)(3) requires that if the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle.

[15] 10 CFR 431.76(f) (*i.e.,* section 5 of appendix A) includes a TE adjustment for condensing CWAFs. This adjustment adds the additional heat gain (expressed in a percent) from condensation of water vapor to the TE and subtracts the heat loss (expressed as a percent) due to the flue condensate flowing down the drain.

[16] DOE notes that Section 2.39 of ANSI Z21.47–2012 and Section 5.40 of ANSI Z21.47–2021 specify a maximum jacket loss of 1.5 percent for any furnace not covered by ''Federal Energy Acts'' (*i.e.,* not regulated by DOE). This provision is not referenced as part of the DOE test procedure.

[17] DOE also received comment from NEEA supporting the addition of jacket loss to the TE metric in response to the May 2020 ECS RFI. (NEEA, EERE–2019–BT–STD–0042–0024 at pp. 6–7)

vs. part-load), and suggested that DOE consider using the method in ASHRAE 155P for determining commercial boiler jacket loss for CWAFs, if this method is repeatable and reproducible. (CA IOUs, No. 8 at p. 4) NEEA stated that its energy modeling showed that improved insulation, decreased casing leakage, and decreased damper leakage can save up to 11 percent of annual energy consumption, and that this magnitude of energy savings is comparable with that of a condensing secondary heat exchanger, which is listed as ''max tech'' in the current CWAF energy conservation standards rulemaking. NEEA also stated that although CWAFs are separately regulated from CUACs, the two types of equipment are often contained within the same rooftop unit (''RTU''), and that enclosure improvements that would improve efficiency of CWAFs would also improve efficiency for CUACs. (NEEA, No. 10 at pp. 3–4) ASAP stated that since the impact of improved insulation is not currently considered in the test procedure, two CWAF units could have the same efficiency rating and yet provide significantly different performance if one unit had better insulation than the other. ASAP further explained that capturing the impact of improved insulation would provide testing results that would better reflect the efficiency of CWAFs during a representative average use cycle, and, in turn, provide better information to purchasers. (ASAP, No. 5 at p. 1)

AHRI, Carrier,[18] and Trane opposed incorporating jacket loss into the TE metric and asserted that it would have a minimal effect on performance. (AHRI, No. 7 at p. 5; Carrier, No. 4 at pp. 1–2; Trane, No. 9 at p. 3) AHRI and Trane stated that including jacket loss in the TE calculation would result in minimal change in TE and would lower the TE of the CWAF. (AHRI, No. 7 at p. 5 Trane, No. 9 at p. 3) Carrier also stated that for larger commercial equipment, factory installed options are available that can increase the size of the cabinet downstream of the furnace section, and that test burden on manufacturers would increase significantly if all options that impact jacket size are required to be tested. Carrier asserted that DOE would have to demonstrate the energy benefit since jacket losses are relatively low and their inclusion would result in increased test burden, different design requirements, and significantly higher cost for the manufacturer and the end customer if the minimum efficiency standards did not materially change. (Carrier, No. 4 at p. 2)

On May 12, 2020, DOE published an energy conservation standards RFI (''May 2020 ECS RFI'') for air-cooled CUACs, commercial unitary heat pumps, and CWAFs. 85 FR 27941. DOE received multiple comments from stakeholders in response to the May 2020 ECS RFI that are related to jacket loss and that are relevant to DOE's consideration of whether to incorporate jacket losses into the test procedure for CWAFs. Specifically, the Joint Advocates recommended that DOE amend the CWAF test procedure to include effects of improved insulation.[19] (Joint Advocates, EERE–2019–BT–STD–0042–0023 at p. 3) AHRI stated that it does not see a justification to include jacket loss in the measured energy efficiency, and that there would be minimal, if any, change in the usable heat provided to the end user if jacket loss is added to the TE calculation. (AHRI, EERE–2019–BT–STD–0042–0014 at p. 4) Goodman stated that jacket losses should not be included in the CWAF test procedure, and that inclusion of jacket loss would require new and more difficult testing and increased burden. (Goodman, EERE–2019–BT–STD–0042–0017 at pp. 2–3) Lastly, Goodman recommended DOE not include jacket loss in the DOE test procedure because ASHRAE 90.1–2019 requires that CWAF jacket loss not exceed 0.75 percent of the CWAF input rating, and therefore any effect on measured performance would be small enough to not justify the added burden. *Id.*

Regarding Goodman's reference to the jacket loss requirement for CWAFs in ASHRAE 90.1–2019, DOE notes that as part of a final rule published on May 16, 2012 (''May 2012 final rule'') amending energy conservation standards and test procedures for commercial heating, air-conditioning, and water-heating equipment, DOE addressed the ASHRAE 90.1 requirement pertaining to jacket loss.[20] In the May 2012 final rule, DOE determined that if ASHRAE adds a prescriptive requirement for equipment for which an efficiency level is already specified (*e.g.,* a jacket loss requirement in addition to a TE requirement), DOE does not have the authority to use a dual descriptor for a single equipment type. 77 FR 28928, 28937. Specifically, DOE explained that pursuant to 42 U.S.C. 6313(a)(6), the Secretary has authority to amend the energy conservation standards for specified equipment, but under 42 U.S.C. 6311(18), the statute's definition of the term ''energy conservation standard'' is limited to: (A) A performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or (B) a design requirement for a product. DOE stated that the language of EPCA authorizes DOE to establish a performance standard or a single design standard. As such, DOE concluded that a standard that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority. *Id.*[21] Additionally, DOE previously considered including jacket loss in the TE calculation in a NOPR published on December 13, 1999. 64 FR 69598, 69601 (''December 1999 NOPR''). In the December 1999 NOPR, DOE did not propose to include jacket loss in the TE calculation, having determined that, consistent with adopting industry test standards referenced in ASHRAE/IES Standard 90.1–1989, the statute's intent is to assign the same meaning to the term ''thermal efficiency'' as its definition in the corresponding referenced standards, *i.e.,* 100 percent minus percent flue loss. *Id.* DOE's determination in the December 1999 NOPR was informed by a public workshop held on April 14 and 15, 1998, and what DOE understood to be

[18] DOE also received comment from Carrier opposing this in response to the May 2020 ECS RFI, similarly, stating that jacket loss would have a minimal effect on performance, and that this minimal affect does not justify its inclusion the TE. (Carrier, EERE–2019–BT–STD–0042–0013 at p. 5)

[19] The Join Advocates include the following organizations: Appliance Standards Awareness Project, American Council for an Energy Efficient Economy, California Energy Commission, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships.

[20] The version of ASHRAE 90.1 that was available at the time of the May 2012 final rule (*i.e.,* ASHRAE 90.1–2010) includes the same 0.75-percent jacket loss requirement that is in ASHRAE 90.1–2019.

[21] DOE notes that it has adopted dual metrics under 42 U.S.C. 6313(a)(6)(A), when the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) has amended ASHRAE Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings, and set a dual metric and accompanying standard levels. *See, e.g.,* 77 FR 28928 (May 16, 2012) (DOE adopted energy conservation standards for cooling and heating modes in terms of both Energy Efficiency Ratio (EER) and Coefficient of Performance (COP) for variable refrigerant flow (VRF) water-source heat pumps with cooling capacities at or greater than 135,000 Btu/h and less than 760,000 Btu/h (for which DOE did not previously have standards) in response to updated standards for such equipment in ASHRAE Standard 90.1.) DOE has also adopted a dual metric where a consensus agreement has been presented to DOE for adoption as a direct final rule (DFR) pursuant to 42 U.S.C. 6295(p)(4). *See, e.g.,* 76 FR 37408 (June 27, 2011) (For central air conditioners, DOE adopted dual metrics (*i.e.,* the Seasonal Energy Efficiency Ratio (SEER) and EER) for the hot-dry region as recommended by a consensus agreement supported by a variety of interested stakeholders including manufacturers and environmental and efficiency advocates.) DOE has interpreted these specific statutory provisions as authorizing an exception to the general rule previously stated.

the consensus of the participants that TE should not include jacket loss, because ANSI Z21.47 defined TE without jacket loss. *Id.* As such, DOE acknowledges that the TE as currently determined under ANSI Z21.47 does not include jacket loss even if it is a requirement of ASHRAE 90.1

As noted, DOE is generally required to adopt a test procedure for CWAFs that is consistent with the generally accepted industry testing procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such industry test procedure (*i.e.,* the test procedure referenced in ASHRAE Standard 90.1) is updated, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and (C)) Additionally, EPCA also requires that DOE periodically evaluate the test procedures for CWAFs to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

For the reasons that follow, DOE has tentatively determined that incorporating a jacket loss measurement into the test procedure and metric for CWAFs would improve the representativeness of the test procedure by capturing an attribute of CWAFs other than combustion efficiency (*i.e.,* jacket loss) that can have a substantive impact on the overall energy use of CWAFs.

The current TE is essentially a measure of combustion efficiency. However, the energy efficiency of the equipment is influenced by factors in addition to combustion efficiency (*i.e.,* jacket loss). Jacket loss contributes to the overall energy use of a CWAF and is, therefore, one of the parameters that determines a CWAF's overall efficiency. Heat loss through the cabinet (*i.e.,* jacket loss) is proportional to the thickness of the insulation and/or insulative material used. DOE tentatively agrees with ASAP that CWAFs with the same TE, as determined under the current DOE test procedure, could have different performance in the field if one unit has different insulation than the other. DOE also notes that the vast majority of CWAFs are installed within CUACs located on rooftops, and that these outdoor installations will result in greater jacket loss than CWAFs installed indoors because of the colder ambient air. As such, DOE tentatively agrees with the CA IOUs that performance of a CWAF will vary depending on installation location because of different levels of jacket loss. Differences in performance based on differences in jacket loss are not captured by the current DOE test procedure and metric. Incorporating jacket loss into a TE2 metric will therefore account for differences in CWAF insulation. Additionally, weighting jacket loss based on installation location, which DOE discusses more in the following paragraphs, will account for the differences in jacket loss across various installation locations.

DOE is proposing that, for CWAFs that are designed for outdoor installation (including but not limited to CWAFs that are weatherized, or approved for resistance to wind, rain, or snow) or designed for indoor installation in an unheated space (*i.e.,* isolated combustion systems),[22] jacket loss shall be measured in accordance with the Section 5.40 of ANSI Z21.47–2021. DOE is proposing to multiply this measured jacket loss by jacket loss factors to account for differences in installation location. DOE proposes that a jacket loss factor of 1.7 for CWAFs designed for indoor installation in an unheated space (*i.e.,* isolated combustion system), or 3.3 for CWAFs designed for outdoor installation (including, but not limited to, CWAFs that are weatherized, or approved for resistance to wind, rain, or snow) be multiplied by the measured jacket loss before subtracting the product from thermal efficiency (*i.e.,* TE2 is calculated as 100 percent minus flue and jacket loss, when the jacket loss is the measured jacket loss multiplied by the jacket loss factor). DOE is also proposing that the jacket loss shall be zero for CWAFs designed for installation indoors within a heated space because the heat loss through the CWAF's jacket would go directly into the heated space. DOE notes that this approach is consistent with the approach taken in appendix N to subpart B of 10 CFR part 430 for measuring AFUE in residential furnaces, which references ASHRAE 103. Therefore, DOE has tentatively determined these are the appropriate jacket loss factors to use based on the values found in Section 11.2.11 of ASHRAE 103–2017, and is proposing to use these factors in newly proposed appendix B.[23]

As previously mentioned, DOE references Section 2.39 of ANSI Z21.47–2012 (now Section 5.40 in ANSI Z21.47–21), which includes a test procedure for determining jacket loss. DOE does not currently reference Annex J of ANSI Z21.47–2012, which includes the equation used to calculate jacket loss. Annex J also includes Figures J.1 and J.2 which are used to determine the coefficient of convection and coefficient of radiation for the surface, which are two coefficients used in the calculation of jacket loss. DOE is proposing to incorporate by reference the jacket loss test procedure specified in Section 5.40 of ANSI Z21.47–2021, which includes a reference to Annex J of ANSI Z21.47–2021, for both gas-fired and oil-fired CWAFs. Specifically, DOE is proposing to adopt this test procedure for measuring jacket loss when testing to newly proposed appendix B to determine TE2.

To the extent that manufacturers participate in the industry certification program under ASHRAE 90.1, such manufacturers should already be measuring jacket loss according to the test procedure proposed in this NOPR due to the prescriptive jacket loss requirement in ASHRAE 90.1. Based on a review of models on the market, DOE found the majority of CWAFs indicate in product literature that they comply with the requirements of ASHRAE 90.1, which indicates that many CWAFs are already tested for jacket loss.

DOE is proposing to adopt the industry test standard for determining jacket loss that DOE has tentatively determined is currently being used by industry, and as such would not be unduly burdensome. Additionally, testing according to appendix B would be mandatory only at such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards. Therefore, DOE proposes to incorporate jacket loss in the proposed TE2 metric.

DOE seeks comment on its proposal to require jacket loss be measured when testing CWAFs designed for outdoor

[22] This description of a CWAF designed for outdoor installation is consistent with a residential weatherized warm air furnace specified in 10 CFR 430.2.

[23] DOE notes that the jacket loss factor in Section 11.2.11 of ASHRAE 103–2017 for equipment intended for indoor installation within a heated space is 0.0. As such, jacket loss would be calculated as zero. Therefore, as previously mentioned, DOE is proposing the jacket loss would be assumed to be zero for CWAFs intended for indoor installation within a heated space.

installation and designed for indoor installation within an unheated space when determining TE2 pursuant to newly proposed appendix B, and on its proposed method for measuring jacket loss. DOE also seeks comment on its proposal that jacket loss for CWAFs intended for indoor installation within a heated space would be assumed to be zero, and on its proposed jacket loss factors for CWAFs designed for outdoor installation and designed for indoor installation within an unheated space.

2. Part-Load Performance

In response to the May 2020 RFI, DOE received comments from NEEA and the CA IOUs encouraging DOE to adopt a metric and test procedure that account for operation at part load. (NEEA, No. 10 pp. 1–2; CA IOUs, No. 8 at p. 1) NEEA and the CA IOUs both asserted that CWAFs spend the majority of their time in a low fire mode (*i.e.,* part load) and that adopting a metric that includes part load would better represent the operation of CWAFs in the field. *Id.* More specifically, NEEA asserted that CWAFs often spend 10 to 20 percent of their time at high fire mode (*i.e.,* full load), and that DOE should update its test procedure to include reduced firing rates (*i.e.,* part-load) and seasonal performance so that the test procedure is more representative of an average use cycle.[24] NEEA recommended a seasonal metric be used, asserting that jacket loss, damper leakage, and fan performance would be affected by CWAFs installed in colder climates. (NEEA, No. 10 p.2) NEEA also commented that other DOE test procedures for HVAC equipment have been transitioning to measure part-load and seasonal performance, and that the CWAF test procedure should likewise be updated. (NEEA, No. 10 p. 1) The CA IOUs stated that cyclic losses due to cycling of the burners negatively impacts efficiency of a CWAF, and that accounting for this would increase the representativeness of the test procedure. (CA IOUs, No. 8 at pp. 1–2)

AHRI commented that any additional requirements beyond the current test procedure provisions would be a burden to manufacturers, and that any changes that affect testing or calculations are likely to be overly burdensome compared to any benefits, due to what AHRI characterized as the relatively small market for these appliances. (AHRI, No. 7 at p. 77)

DOE reviewed the current CWAF market and found that the vast majority of CWAFs certified to DOE have two or more stages of heating. DOE notes that CWAFs with two or more stages can operate at reduced firing rates to meet the building load. Under the current DOE test procedure, TE reflects the efficiency of the burner and the efficiency of the heat exchanger at full load. When a CWAF burner operates at a reduced input rate (*i.e.,* part load), the ratio of heat exchanger surface area to burner input rate is increased (in comparison to operation at full load), which theoretically should increase the efficiency of the CWAF compared to operating at full load, if other aspects of operation are consistent. However, depending on the air-fuel ratio or other factors impacting combustion efficiency, the combustion efficiency could decrease, and therefore, the change in performance, including whether efficiency is improved or reduced at part-load, could vary from model to model. Therefore, CWAF part-load performance has the potential to be substantively different from full-load performance and including part-load performance in the measurement of CWAF efficiency would allow the efficiency metric to account for this potential difference and be more representative. To provide for measured test results that are more representative of the average use cycle of CWAFs that are two-stage and modulating burner units (*i.e.,* CWAFs that operate at less than full load), DOE proposes to include a part-load measurement in the test procedure proposed at newly proposed appendix B. DOE has tentatively determined that including a part-load test procedure within the DOE test procedure would better capture how CWAFs operate in the field and would be more representative of the performance of CWAFs during an average use cycle, particularly for models that have two or more stages of heating. Therefore, DOE is proposing to include both part-load and full-load operation tests in the newly proposed appendix B.

Specifically, DOE proposes to require that, for two-stage or modulating burner models, the flue loss of the unit under test be determined as specified in section 2 of appendix A (formerly 10 CFR 431.76(c)) at both the maximum and minimum input rates on the nameplate of the unit. The jacket loss (as described in section III.C.1 of this document) would be determined at the maximum input rate and optionally be determined at the minimum input rate. If the jacket loss were determined only at the maximum input rate, it would be assigned an equivalent value at the minimum input rate. TE2 would then be calculated as the average of the efficiencies determined at both the maximum and minimum input rates using the flue loss and jacket loss determined at each input rate.

Averaging the performance at the maximum and minimum input rate weights both full-load and part-load CWAF operation equally (*i.e.,* representing CWAF operation at full load 50 percent of the time and part load 50 percent of the time). DOE considered the relationship between full-load operation and part-load operation presented in the comments from NEEA. However, the 10 to 20 percent estimate of operation at full load referenced by NEEA was based on data for climate regions represented by Winnipeg, Montreal, and Toronto. DOE has tentatively determined that operating conditions represented by these climate zones are not representative of the United States, which includes more temperate climate zones.

DOE also considered relying on the part-load and full-load burner operating hour calculations for two-stage and modulating furnaces specified in Appendix C of ANSI/ASHRAE 103–2017. However, DOE tentatively determined that this approach would not be representative because the calculations specified in Appendix C of ANSI/ASHRAE 103–2017 include assumptions that are specific to residential furnaces (*e.g.,* national average heating load hours) that may not be representative for CWAFs. For example, CWAFs may operate more frequently during business hours, whereas a residential furnace may operate more frequently during off-business hours when people are more likely to be at home.

DOE tentatively finds that CWAFs spend a substantive amount of time in part-load. Absent nationally representative data or information to support weighting factors for full-load and part-load performance that are more representative of an average use cycle, DOE has tentatively determined that weighting both equally is appropriate at this time, however DOE seeks comment on this tentative determination.

DOE seeks comment on its proposal to add a part-load test procedure to be incorporated into the newly proposed TE2 metric. DOE also seeks comment on its proposal to calculate TE2 by averaging performance at the maximum and minimum fire rate and seeks and any related data. DOE also requests comment on alternate weighting values, including those discussed, that may be more nationally representative of an

[24] NEEA referenced the following energy model: Energy Modeling of Commercial Gas Rooftop Units in Support of CSA P.8 Standard.

average use, along with any relevant data.

D. Electrical Energy Consumption

In the May 2020 RFI, DOE noted that the DOE test procedure for CWAFs does not include any measurement of electrical consumption in its determination of the efficiency of CWAFs, including electrical consumption of blowers/fans, controls, or other auxiliary electrical consumption. 85 FR 26626, 26632. DOE explained that CWAFs are typically part of a single package that also includes air-conditioning equipment, and that the test method and metrics for commercial air-conditioning and heating equipment (*i.e.,* integrated energy efficiency ratio (''IEER'')) accounts for the electrical consumption of the blower; as such, the electrical consumption of the blower has not been included in the CWAF test method. *Id.* DOE noted that any auxiliary electrical consumption associated only with the furnace operation when heating is not accounted for in any metric. *Id.*

In the May 2020 RFI, DOE asked for comment on whether it should consider including the electrical consumption of CWAFs in the CWAF efficiency metric or test procedure, as well as on the merits and burdens of such approach. *Id.* DOE also asked for comment on which components' electrical consumption would be appropriate to include, noting that the electrical consumption of the CWAF blower is typically factored into other commercial equipment efficiency metrics and test procedures. *Id.*

ASAP, the CA IOUs, and NEEA recommended that DOE account for electrical consumption of the CWAF. (CA IOUs, No. 8 at p. 2; ASAP, No. 5 at p. 1; NEEA, No. 10 at p. 4) More specifically, ASAP urged DOE to ensure that all electrical consumption associated with CWAFs (including CWAF auxiliary electrical consumption) is captured in either the CWAF test procedure or the test procedure for CUACs. Specifically, regarding auxiliary electrical consumption, ASAP stated that capturing auxiliary electrical consumption would better reflect the efficiency of CWAFs during a representative average use cycle, thus providing better information to purchasers. (ASAP, No. 5 at p. 2) ASAP also stated that the term sheet from the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') working group for CUACs and CWAFs contained a recommendation that DOE amend the test procedure for CUACs to better capture total fan energy use, including the energy use associated with the supply fan operation when the unit is in heating mode. (ASAP, No. 5 at p. 1) The CA IOUs also noted that the ASRAC term sheet includes a recommendation to update the CUAC test procedure to ''better represent total fan energy use, including considering (a) alternative external static pressures; and (b) operation other than mechanical cooling and heating.'' (ASAP, No. 5 at pp. 1–2; CA IOUs, No. 8 at pp. 2–3) Similarly, NEEA stated that electrical energy should be considered in total energy consumption in all operating modes, citing that RTUs spend the majority of their time in ventilation mode, and that electrical energy consumption of an RTU is 4 to 11 percent of total seasonal energy consumption. (NEEA, No. 10 at p. 4) Additionally, NEEA stated that the current CWAF test procedure does not capture many energy efficient features that are currently available on the market and, therefore, does not effectively allow manufacturers to distinguish more efficient equipment.[25] NEEA also encouraged DOE to consider a calculation-based test procedure to include other energy using components and operating modes. (NEEA, No. 10 at pp. 3–4) DOE also received comment from the Joint Advocates in response to the May 2020 ECS RFI, recommending DOE amend the CWAF test procedure to capture auxiliary electrical consumption. (Joint Advocates, EERE–2019–BT–STD–0042–0023 at p. 3)

AHRI, Carrier, and Trane recommended against including the electrical consumption of CWAFs in the efficiency metric or test procedure. (AHRI, No. 7 at p. 6; Trane, No. 9 at p. 4; Carrier, No. 4 at p. 3) AHRI stated that the electrical energy consumption of CWAF components is minimal compared to the fossil fuel energy used for heating. (AHRI, No. 7 at p. 6) Trane explained that combustion fan motor wattage is very small as a percentage of these commercial furnaces (Trane, No. 9 at p. 4) More specifically, AHRI stated that the energy consumption of a combustion fan is a fraction of a percent of the total energy consumption. Carrier similarly asserted that the power draw of the inducer fan used to create the draft through the furnace is minimal compared to the energy of combustion. (Carrier, No. 4 at p. 3) AHRI and Trane asserted that the extra burden from retesting and certifying to a new metric is not worth adding electrical consumption into a new efficiency metric. (AHRI, No. 7 at p. 6; Trane, No. 9 at p. 4) AHRI and Carrier noted that CWAFs are often sold as part of a packaged unit (*i.e.,* within a CUAC), and that the blower and fans are included in the performance measurement of the CUAC. (AHRI, No. 7 at p. 6; Carrier No. 4 at p. 3) AHRI also noted that the total air-conditioning hours are far greater than the total heating hours. (AHRI, No. 7 at p. 6; Carrier, No. 4 at p. 3)

DOE agrees with stakeholders that CWAFs are typically installed within a CUAC, and that the energy consumption of the supply air fan is captured in the current CUAC test procedure. DOE notes that the energy consumption of the supply air fan during furnace-only operation is not captured within the CUAC test procedure; however, DOE has tentatively determined that such energy consumption would be better addressed in a future amendment to the CUAC test procedure, rather than also integrating supply fan consumption into the CWAF test procedure. This approach would allow for the supply air fan's energy consumption to be captured in a single test procedure. Similarly, DOE notes that many of the components that were referenced by NEEA are related to CUAC performance. As such, DOE has tentatively determined that these components would be better addressed a future CUAC test procedure amendment. Therefore, DOE has tentatively determined not to include supply fan energy consumption in the CWAF metric.

DOE also considered whether to include the electrical energy consumption of other auxiliary components of CWAFs within the DOE test procedure. In a final rule published on May 4, 2016, amending the energy conservation standards for CWAFs, DOE analyzed the auxiliary energy consumption of CWAFs, finding that on average, auxiliary power consumption for the draft inducer was 100 W for gas-fired CWAFs and 220 W for oil-fired CWAFs. (*See* section 7B.3 of the Final Rule TSD, EERE–2013–BT–STD–0021–0050.) DOE also estimated the power consumption of other auxiliary components (*e.g.,* 25 W for spark ignition). *Id.* This auxiliary power consumption, as compared to the fossil fuel energy input rate, represents a fraction of a percent of the total energy consumption of a CWAF. As such, improvements in electrical power consumption, if integrated into TE, would have a negligible impact on the measured energy efficiency of a CWAF. DOE has tentatively determined that incorporating electrical consumption into the measurement of CWAF

[25] NEEA stated that these efficient components include low leak dampers, improved insulation or thermally broken insulation, variable speed fans, economizing capability, improved controls, demand control ventilation, modulating heat/high turndown furnaces, and heat recovery. (NEEA, No. 10 at p. 3)

efficiency would not substantially improve the representativeness of the test procedure and would increase testing burden. DOE also notes that including electrical consumption in the determination of CWAF efficiency would be a significant deviation from how CWAF efficiency is currently measured, for which DOE must demonstrate ''clear and convincing evidence'' that such change would more fully comply with the requirements of EPCA. Because DOE has tentatively concluded it is unlikely that inclusion of electrical energy in the TE metric would impact the thermal efficiency rating, DOE tentatively concludes that such a change would not meet the clear and convincing threshold established by DOE. Therefore, DOE is not proposing to update the CWAF test procedure to include electrical consumption.

E. Other Test Procedure Updates and Clarifications

1. Flue Temperature Measurement in Models With Multiple Vent Hoods

In the May 2020 RFI, DOE noted that neither the DOE test procedure nor the ANSI Z21.47 test procedure specifies how to perform the flue temperature measurement if a unit has multiple vent hoods, and that models are currently available on the market with multiple vent hoods. 85 FR 26626, 26631. DOE notes that in this NOPR, as in the May 2020 RFI, DOE's references to a ''vent hood'' are synonymous with a ''vent pipe.''

In the May 2020 RFI, DOE requested comment on how CWAFs with more than one vent hood are currently tested and whether it should consider adding provisions in the DOE test procedures to address measuring the flue gas temperature of a unit with multiple vent hoods. DOE also asked how best to measure flue gas temperature in such units. *Id.*

AHRI stated that the manufacturers' installation instructions should include information regarding the use of multiple vents and each vent's functionality. AHRI stated that if the vent hood modules are the same size, the results are averaged; however, if they are different sizes, the test results for each vent hood should be adjusted accordingly before averaging the results. AHRI stated that, for example, if one vent is intended to exhaust two-thirds of the flue product and the second is intended to exhaust the remaining one-third, then this should be specified in the installation instructions, and a weighted average used to determine the flue gas temperature. (AHRI, No. 7 at p. 5)

Trane stated that DOE should use the instructions in both the installation operation manuals as well as the supplemental testing instruction (''STI'') supplied when a model is certified to DOE for determining how to measure flue gas for models with multiple vent hoods. (Trane, No. 9 at p. 3)

Carrier stated that the procedure it uses for models with multiple vent hoods is to analyze combustion products and measure flue temperature separately in each vent hood, and then use the averaged data of all vents to calculate TE. (Carrier, No. 4 at p. 2)

DOE tentatively agrees that results should be measured in each vent hood and weighted proportionally to the size of each vent hood when calculating TE. For units with multiple vent hoods of the same size, this approach would result in the measurements being averaged. Therefore, in order to ensure consistency between tests, DOE is proposing to add instructions to clarify the test method for models with multiple vent hoods. DOE proposes that measurements used to calculate TE (*e.g.,* flue gas temperature, CO_2 in flue gasses), be made separately for each vent hood, and that they are weighted proportionally to the size of each vent hood when calculating flue loss. Further, DOE proposes that test requirements, such as determining when equilibrium conditions occur based on the flue gas temperature, are determined based these weighted measurements. This proposal is predicated on the assumption that the amount (*i.e.,* mass flow) of flue exhaust exiting each vent hood is proportional to the hood size. DOE recognizes that vent hood ''size'' may be measured in various ways, and therefore is proposing to specify that vent hoods size would be determined by calculating the outlet face area of the vent hood. As noted, DOE is proposing this additional procedure for clarification and to improve test repeatability, as ANSI Z21.47–2021 does not address flue temperature measurements in CWAFs with multiple vent hoods.

DOE seeks comment on its proposal to provide instructions in the DOE test procedure for testing units with multiple vent hoods.

DOE seeks comment on its assumption that the amount (*i.e.,* mass flow) of flue exhaust exiting each vent hood is proportional to the size of the vent hood. Furthermore, DOE seeks comment on its proposal to compare vent hood outlet face areas to determine vent hood size.

2. Flue Temperature Measurement in Models With Vent Space Limitations

In the May 2020 RFI, DOE noted that Section 2.16 of ANSI Z21.47–2012 and Section 5.16 of ANSI Z21.47–2016 both specify measuring the flue gas temperature in the vent pipe using nine individual thermocouples placed in specific locations; however, these sections do not provide guidance on how to measure the flue gas temperature if the vent size constrains the space where the thermocouples are to be placed to the point that normal operation of the unit is inhibited when nine thermocouples are installed. 85 FR 26626, 26631–26632. DOE notes this is also true of Section 5.16 in ANSI Z21.47–2021. In the May 2020 RFI, DOE noted that a vent may be so small (if, for example, a unit has multiple vents) that it is not practical to measure the flue gas temperature using nine thermocouples. DOE also explained that during testing of one unit with a particularly small vent hood, DOE found that placing nine [26] thermocouples was not practical due to space limitations. 81 FR 26626, 26631–26632.

In the May 2020 RFI, DOE asked for comment on how CWAFs with vent size constraints are currently tested and whether DOE should consider adding provisions in the DOE test procedure to address measuring the flue gas temperature when space limitations preclude the use of nine thermocouples. DOE also asked how best to measure flue gas temperature in such units. 81 FR 26626, 26632.

AHRI stated that the manufacturer's test instructions may specify that the number of thermocouples be limited due to space constraints within the draft hood. In such instances, the testing laboratory will follow the manufacturer's test instructions for set-up. (AHRI, No. 7 at p. 6) Trane stated that it believes the manufacturer will communicate how measurements were performed either in the STI or installation manual to achieve the performance metric rating that is certified, and that DOE should follow those instructions. (Trane, No. 9 at p. 3) Carrier acknowledged that, at times, it is impossible to fit nine thermocouples adequately in a smaller vent and stated that it uses the procedure from ANSI/ASHRAE 103, which specifies the number of thermocouples depending on

[26] In the May 2020 RFI, DOE stated that DOE found that placing more than four thermocouples for that particular test unit was not practical due to space limitations. 85 FR 26626, 26632. However, this was a typographical error; DOE intended to state that placing nine thermocouples (not more than four) was not practical in this instance due to space limitations.

the diameter of the vent. Carrier further stated that ANSI/ASHRAE 103 requires five thermocouples for vents 2 inches in diameter and smaller, nine thermocouples for vents greater than 2 inches in diameter, and 17 thermocouples for a stack measurement. (Carrier, No. 4 at p. 2)

In order to ensure consistency and repeatability in the application of the test method for models with small vent hoods, DOE recognizes the need to specify how to perform the DOE test procedure when nine thermocouples do not fit inside the vent hood. Although AHRI and Trane suggest allowing the manufacturer to specify how the thermocouples should be installed, this could lead to inconsistent test set-up and results for models with small vents if manufacturers choose different approaches for testing. Therefore, DOE is proposing to align its test procedure with ASHRAE 103–2017. More specifically, DOE is proposing to specify in the DOE test procedure that when testing gas- and oil-fired CWAFs, the flue gas temperatures shall be measured in the vent hood using nine individual thermocouples when the vent hood is larger than 2 inches in diameter and may optionally be measured using five individual thermocouples when the vent hood is 2 inches or smaller in diameter.

DOE seeks comment on the proposal to specify in the DOE test procedure that when testing gas- and oil-fired CWAFs, the flue gas temperatures shall be measured in the vent hood using nine individual thermocouples, or if the vent hood is 2 inches or smaller in diameter, five thermocouples may optionally be used.

3. Input Rate Tolerance

In the May 2020 RFI, DOE noted that its test procedure for gas-fired CWAFs references the test method in ANSI Z21.47, and that the thermal efficiency test in Section 2.39 of ANSI Z21.47 requires that the test be conducted at normal inlet pressure and at 100 percent of normal input rate (*i.e.,* the maximum hourly Btu input rating specified by the manufacturer). 10 CFR 431.76(c)(1). DOE noted that no tolerance is provided on the input rate in section 2.39, so when taken literally, this provision could be interpreted to require that the firing rate be exactly 100 percent of the nominal input rate. DOE further noted that other types of fossil-fuel-fired equipment such as commercial packaged boilers, commercial water heaters, residential water heaters, residential furnaces, and residential boilers require the input rate during testing to be within ±2 percent of the nameplate input rate. 85 FR 26626, 26631.

In the May 2020 RFI, DOE asked for comment on whether industry uses a tolerance when testing to ANSI Z21.47, and if so, what tolerance is used. DOE also asked whether a tolerance should be specified for the input rate during testing of gas-fired CWAFs, and if so, what tolerance would be appropriate. *Id.*

Carrier stated that it uses a minor plus-and-minus tolerance on input rate and that it understands that this approach is not included in ANSI Z21.47, but it has been used on furnace testing at Carrier for many years.[27] (No. 4 at p. 2) Trane and AHRI both commented that section 5.4.4 [28] of ANSI Z21.47–2016 includes a ±2 percent tolerance on input rate. (AHRI, No. 7 at p. 5; Trane, No. 9 at p. 3) The CA IOUs recommend including a tolerance of ±2 percent of rated input for gas-fired CWAFs, consistent with the commercial boiler test methods described in AHRI 1500–2015. (CA IOUs, No. 8 at p. 4.)

DOE notes that Sections 5.5.4 of ANSI Z21.47–2016 and 5.5.4 of ANSI Z21.47–2021 both specify a ±2 percent tolerance on the manufacturer's specified hourly Btu input rating, and that the same ±2 percent input rate tolerance is also specified in Section 2.5.4 of ANSI Z21.47–2012, which is currently incorporated by reference in the current DOE test procedure. As discussed in section III.B.3 of this document, DOE is proposing to reference the Sections of ANSI Z21.47–2021 that correspond to the sections in ANSI Z21.47–2012 that are currently referenced, including Section 5.5 of ANSI Z21.47–2021. This proposal, therefore, incorporates Section 5.5.4 of ANSI Z21.47–2021, which includes the ±2 percent tolerance on the manufacturer's specified hourly Btu input rating.

4. Flue Loss Determination

Section 2.39 of ANSI Z21.47–2012 and Section 5.40 ANSI Z21.47–2021 reference Annex I for the determination of flue loss that is used in the TE calculation. Annex I includes two methods for determining flue loss—one method that uses a calculation, and one method that uses nomographs shown in Figures I.1 and I.2 of ANSI Z21.47–2021. The nomograph method may only be used when the heating value, specific gravity, and flue gas CO_2 of a CWAF fall within a specified range.[29] If these conditions are met, either calculation method may be used. DOE notes that the option to use either method may result in issues with repeatability if the determination of flue loss varies when using each method. Therefore, DOE is proposing in section 4 of appendix A (formerly 10 CFR 431.76(e)) that the calculation method must be used when determining flue loss. DOE is proposing use of the calculation method rather than the nomograph method because the nomograph method is not applicable for all tests, and the calculation method is likely to provide better repeatability by eliminating subjective differences in interpreting the nomograph.

DOE seeks comment on its proposal to require the calculation method specified in Annex I of ANSI Z21.47–2021 be used when determining flue loss, and not the nomograph method.

F. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for CWAF for determining TE by incorporating by reference the most up-to-date versions of the industry standards currently referenced in the DOE test procedure, and by providing additional detail for the test setup for models with multiple vent hoods and models with vent hoods having space limitations. DOE has tentatively determined that these proposed amendments for determining TE would not be unduly burdensome for manufacturers to conduct, and that the proposed test procedures for this equipment are consistent with the industry test procedure updates. DOE has tentatively determined that the proposed amendments to the test procedure for determining TE would improve the representativeness, accuracy, and reproducibility of the test results and would not be unduly burdensome for manufacturers to conduct. DOE expects that the proposed test procedure in appendix A for measuring and TE would not increase testing costs.

DOE also is proposing to establish a new TE2 metric and establish a new appendix B, which would include the test procedure for determining TE2. DOE estimates that the additional test cost due to the additional part-load test and jacket loss test required for the TE2

[27] Carrier did not provide a specific value for the tolerance it uses for CWAF testing.

[28] DOE understands commenters to have intended to reference section 5.5.4 as there is no section 5.4.4 in ANSI Z21.47–2016.

[29] Heating value for natural gas or propane must be 970–1100 Btu/ft^3 or 2466–2542 Btu/ft^3, respectively. Specific gravity for natural gas or propane must be 0.57–0.70 or 1.522–15.74, respectively. Ultimate carbon dioxide for natural gas or propane must be 11.7–12.2% or 13.73–13.82%, respectively.

metric would be $2,200, compared to the current DOE test procedure, which DOE estimates to be $4,200 at a third-party laboratory (*i.e.,* a total estimated cost of $6,400 per tested unit for the amended TE2 test procedure). Therefore, assuming two units are tested per basic model,[30] DOE estimates the testing cost associated with the newly proposed appendix B test procedure to be $12,800 per basic model.

In accordance with 10 CFR 429.41, CWAF manufacturers may elect to use an alternative efficiency determination method (''AEDM'') to rate models for the TE2 metric, which significantly reduces testing costs to industry. DOE estimates the per-manufacturer cost to develop and validate an AEDM to determine TE2 for CWAF equipment to be $17,300. DOE estimates a cost of $46 per basic model for determining energy efficiency using a validated AEDM.[31]

Additionally, DOE has tentatively determined that the proposed appendix B test procedure and TE2 calculation would alter the measured energy efficiency of a CWAF.

As previously discussed, the proposed test procedure provisions regarding TE2 would not be mandatory unless and until compliance is required with amended energy conservation standards that rely on TE2. Because DOE is not referencing a prevailing industry test procedure for determination of TE2, DOE expects that the updated DOE test procedure in appendix B would increase the testing burden on CWAF manufacturers if use of appendix B were required in the future. However, DOE has tentatively determined that the test procedure amendments, if finalized, would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment.

DOE seeks comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically with respect to DOE's estimated test costs, and DOE's initial conclusion regarding the testing costs associated with the proposed test procedure for TE2 as compared to the current test procedure.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; section 8(c) of appendix A 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make appropriate modifications to the DOE test procedure through the rulemaking process.

The current test procedures for CWAF at 10 CFR 431.76 incorporates by reference UL 727–2006 for testing oil-fired CWAFs, HI BTS–2000 for performing fuel oil analysis and for calculating flue loss of oil-fired CWAFs, ANSI Z21.47–2012 for testing gas-fired CWAFs, and ANSI/ASHRAE 103–2007 for testing condensing gas-fired CWAFs. As discussed, the proposed amendments to the DOE test procedure for determining TE would update the references to the incorporated industry testing standards. Also as discussed, DOE is proposing to adopt a new metric, TE2, for CWAFs. There is no industry testing standard that provides for determining TE2. However, the test procedure provisions that provide the measured inputs for determining TE2 rely on the same industry testing standards DOE is proposing to reference for determining TE.

DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for CWAFs.

DOE recognizes that adopting industry standards with modifications imposes a burden on industry *(i.e.,* manufacturers face increased costs if the DOE modifications require different testing equipment or facilities). DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized further with the most recent relevant industry standards for CWAFs, and whether there are any changes to the Federal test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of, or any other comments regarding adopting of, any industry/voluntary consensus-based or other appropriate test procedure, without modification.

G. Compliance Date

EPCA prescribes that if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

To the extent the modified test procedure proposed in this document is required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedure, if finalized, would not be required until the compliance date of updated standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute a significant regulatory action under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The following sections detail DOE's IRFA for this test procedure rulemaking.

[30] Per the sampling requirements specified at 10 CFR 429.11(b), manufacturers are required to test at least two units to determine the rating for a basic model, except if only one unit of the basic model is produced.

[31] DOE's estimated initial cost to develop and validate an AEDM includes (1) 80 hours to develop the AEDM based on existing simulation tools; (2) an additional 16 hours to validate the AEDM for two basic models at the cost of an engineering calibration technician wage of $46 per hour; and (3) the cost of third-party testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM assuming 1 hour per basic model at the cost of an engineering calibration technician wage of $46 per hour.

1. Description of Why Action Is Being Considered

DOE is proposing to amend the existing DOE test procedures for CWAFs in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(ii)).

2. Objective of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [32] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6311–6317) This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(1)(J))

Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including CWAFs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 63146314(a)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of CWAFs, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The equipment covered by this rule are classified under North American Industry Classification System (''NAICS'') code 333415,[33] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE reviewed the test procedures proposed in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE's analysis relied on publicly available databases to identify potential small businesses that manufacture equipment covered in this rulemaking. DOE utilized the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[34] EPA's ENERGY STAR Database,[35] and the DOE's Certification Compliance Database (''CCD'') [36] to identify to manufacturers. DOE identified eight original equipment manufacturers (''OEMs'') of CWAFs affected by this rulemaking. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. Of these eight OEMs, DOE identified one small, domestic OEM for consideration. DOE used subscription-based business information tools to determine headcount and revenue of the small business.

4. Description and Estimate of Compliance Requirements

In this NOPR, DOE proposes to amend the existing test procedure for CWAFs when determining TE by incorporating by reference the most up-to-date versions of the industry standards currently referenced in the DOE test procedure, and to provide additional detail for the test setup for models with multiple vent hoods and models with vent hoods having space limitations. DOE proposes to update appendix A (formerly 10 CFR 431.76), ''Uniform test method for the measurement of energy efficiency of commercial warm air furnaces'' as follows:

(1) Incorporate by reference UL 727–2018 (previously UL 727–2006) for testing oil-fired CWAFs;

(2) Incorporate by reference AHRI 1500–2015 (previously HI BTS–2000) for performing fuel oil analysis and for calculating flue loss of oil-fired CWAFs;

(3) Incorporate by reference ANSI Z21.47–2021 (previously ANSI Z21.47–2012) for testing gas-fired CWAFs;

(4) Incorporate by reference ANSI/ASHRAE 103–2017 (previously ANSI/ASHRAE 103–2007) for testing condensing gas-fired CWAFs;

(5) Incorporate by reference the standards referenced in UL 727–2018 (*i.e.,* NFPA 97–2003), AHRI 1500–2015 (*i.e.,* ASTM D396–14a, ASTM D240–09, ASTM D4809–09a, and ASTM D5291–10), and ANSI Z21.47–2021 (*i.e.,* ANSI/ASME PTC 19.3–1974 (R2004)) that are necessary in performing the DOE test procedure;

(6) Clarify how to test units with multiple vent hoods, and units with vent hoods that are 2 inches in diameter or smaller; and

DOE also proposes to establish a new test procedure and metric for ''TE2'' in a new appendix B to 10 CFR 431.72, which manufacturers could use to make voluntary representations, and which would be mandatory only at such time as compliance is required with amended energy conservation standards based on TE2, should DOE adopt such standards. The proposed new TE2 metric accounts for flue losses in a manner identical to the existing TE metric, and accounts for jacket losses and part-load operation.

Items (1) through (5) incorporate by reference the most up-to-date versions of the industry standards currently referenced in the DOE test procedure. Item (6) includes clarifications intended to improve consistency and reproducibility of test procedure results. The industry test procedure ANSI Z21.47 does not specify how to test units with multiple vent hoods or units with vent hoods that are too small to fit the required number of thermocouples. DOE is proposing to add clarifications and guidance to address these scenarios. DOE has tentatively determined that these proposed amendments in this NOPR would improve the representativeness, accuracy, and reproducibility of the test results and would not increase third-party laboratory testing costs.

In item (7), DOE proposes to adopt appendix B, which includes the relevant test procedure requirements for measuring TE2, an efficiency metric proposed by DOE which incorporates jacket loss and CWAF performance at reduced firing rates. The proposed NOPR amendments would not require

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

[33] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last accessed July 16, 2021).

[34] MAEDbS can be accessed at *www.cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (Last accessed July 15, 2021).

[35] ENERGY STAR-certified products can be found in the ENERGY STAR database accessed at *www.energystar.gov/productfinder/product/certified-commercial-water-heaters/results* (Last accessed July 15, 2021).

[36] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed July 15, 2021).

manufacturers to re-rate models, as DOE energy conservation standards do not currently require TE2 ratings. As such, the test procedure amendments do not result in industry costs.

Should DOE adopt energy conservation standards based on the TE2 metric in proposed appendix B in the future, DOE anticipates manufacturers would incur costs to re-rate models as result of the standards. DOE expects the proposed test procedure in appendix B for measuring TE2 would increase testing costs compared to the current DOE test procedure. The current DOE test procedure costs approximately $4,200 per unit for third-party laboratory testing. DOE estimates the cost for third-party laboratory testing according to the proposed appendix B to be $6,400 per unit.

If CWAF manufacturers conduct testing to certify a basic model, two units are required to be tested per basic model. The test cost, according to the proposed amendments, would be $12,800 per basic model.[37] However, manufacturers are not required to perform laboratory testing on all basic models, as CWAF manufacturers may elect to use AEDMs.[38] An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. DOE estimates the cost to develop and validate an AEDM for CWAFs to be $17,300, which includes testing of two models per validation class. Additionally, DOE estimates a cost of approximately $46 per basic model for determining energy efficiency using the validated AEDM.

DOE estimates the range of potential costs for the one domestic, small OEM. When developing cost estimates for the small OEM, DOE considers the cost to develop the AEDM simulation tool, the costs to validate the AEDM through testing, and the cost to rate basic models using the AEDM.

DOE research indicates that the one small manufacturer has average annual revenues of $3.3 million. DOE understands this OEM to manufacture four basic models. Therefore, DOE estimates that the associated re-rating costs for this manufacturer to be approximately $17,400 when making use of AEDMs. The cost for this small manufacturer to re-rate all basic models is estimated to be less than 1 percent of annual revenue.

DOE requests comment on the number of small OEMs DOE identified. DOE also seeks comment on the potential costs this small manufacturer may incur.

5. Duplication Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

DOE proposes to reduce burden on manufacturers, including small businesses, by allowing AEDMs in lieu of physically testing all basic models. The use of an AEDM is less costly than physical testing of CWAF models. Without AEDMs, DOE estimates the cost to physically test all CWAF basic models for the identified small manufacturer to be approximately $51,200.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CWAFs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CWAFs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CWAFs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed

[37] The cost to test one unit is $6,400. The cost to test two units is $12,800.

[38] In accordance with 10 CFR 429.70.

rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 4316(b); 42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *https://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of CWAFs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–

91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for CWAF would incorporate testing methods contained in certain sections of the following commercial standards: UL 727–2018, AHRI 1500–2015 ANSI Z21.47–2021, and ANSI/ASHRAE 103–2017. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the following standards:

(1) UL 727–2018. This test standard provides instruction for how to test oil-fired CWAFs.

Copies of UL 727–2018 can be obtained from Underwriters Laboratories, Inc., 2600 NW. Lake Rd., Camas, WA 98607–8542, (360) 817–5500 or online at: *standardscatalog.ul.com.*

(2) ANSI Z21.47–2021. This test standard provides instruction for how to test gas-fired CWAFs.

(3) ASHRAE 103–2017. This test standard provides instruction for how to test residential furnaces and boilers, which DOE is referencing for the purpose of providing instruction for testing condensing gas-fired CWAFs.

(4) ANSI/ASME PTC 19.3–1974 (R2004). This standard is also referenced as ANSI Z21.47–2021, and it specifies thermocouple requirements for when testing gas-fired CWAFs.

Copies of ANSI Z21.47–2021, ANSI/ASHRAE 103–2017 and ANSI/ASME PTC 19.3–1974 (R2004), can be obtained from 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org.*

(5) AHRI 1500–2015. This test standard provides instruction for how to test perform fuel oil analysis and for how to calculate flue loss of oil-fired CWAFs.

Copies of AHRI 1500–2015 can be obtained from 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or online at: *ahrinet.org.*

(6) NFPA 97–2003. This standard is referenced in UL 727–2018, and it provides definitions for the terms combustible and noncombustible.

Copies of NFPA 97–2003 can be obtained form 1 Batterymarch Park, Quincy, MA 02169–7471, (617) 770–3000 or by going online at: *www.nfpa.org.*

(7) ANSI/ASTM E230/E230M–17. This standard is referenced in UL 727–2018, and it specifies thermocouple requirements for when testing oil-fired CWAFs.

(8) ASTM D396–14a. This standard is referenced in AHRI 1500–2015, and it contains general fuel oil requirements.

(9) ASTM D240–09. This standard is referenced in AHRI 1500–2015, and it contains fuel oil heating value requirements.

(10) ASTM D4809–09a. This standard is referenced in AHRI 1500–2015, and it contains fuel oil hydrogen and carbon content requirements.

(11) ASTM D5291–10. This standard is referenced in AHRI 1500–2015, and it contains fuel oil density requirements.

Copies of ANSI/ASTM E230/E230M–17, ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, and ASTM D5291–10, can be obtained from 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786 or by going online at: *www.astm.org.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=49&action=viewlive* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rule, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *Appliance StandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow

time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Participation in the Webinar

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

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

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

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

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

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

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

E. Issues on Which DOE Seeks Comment

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

(1) DOE seeks comment on its tentative conclusion that NFPA 97M is an outdated standard that has been superseded by NFPA 97–2003. DOE seeks comment on its proposal to incorporate by reference NFPA 97–2003 in 10 CFR part 431, subpart D.

(2) DOE seeks comment on its proposal to adopt the optional method specified in AHRI 1500–2015 that allows for calculating CO_2 using a measured O_2 value. DOE also seeks comment on its proposal to establishestablish section 3 of appendix A (*i.e.,* an update of 10 CFR 431.76(d) of the current DOE test procedure) to accommodate the option to calculate CO_2 using a measured O_2 value.

(3) DOE seeks comment on whether the option provided in Section 5.4a of ANSI Z21.47–2021 to use test gas H when performing the three burner characteristics tests would impact the representativeness or burden of the thermal efficiency test.

(4) DOE seeks comment on its proposal to establish a new test procedure (*i.e.,* appendix B) and metric (*i.e.,* TE2) for CWAFs, which would generally adopt the same changes proposed for the current test procedure at appendix A and account for flue losses in the same manner as the current

TE metric, but would additionally account for jacket losses and part load operation.

(5) DOE seeks comment on its proposal to require jacket loss be measured when testing CWAFs designed for outdoor installation and designed for indoor installation within an unheated space when determining TE2 pursuant to newly proposed appendix B, and on its proposed method for measuring jacket loss. DOE also seeks comment on its proposal that jacket loss for CWAFs intended for indoor installation within a heated space would be assumed to be zero, and on its proposed jacket loss factors for CWAFs designed for outdoor installation and designed for indoor installation within an unheated space.

(6) DOE seeks comment on its proposal to add a part-load test procedure to be incorporated into the newly proposed TE2 metric. DOE also seeks comment on its proposal to calculate TE2 by averaging performance at the maximum and minimum fire rate and seeks and any related data. DOE also requests comment on alternate weighting values, including those discussed, that may be more nationally representative of an average use, along with any relevant data.

(7) DOE seeks comment on its proposal to provide instructions in the DOE test procedure for testing units with multiple vent hoods.

(8) DOE seeks comment on its assumption that the amount (*i.e.,* mass flow) of flue exhaust exiting each vent hood is proportional to the size of the vent hood. Furthermore, DOE seeks comment on its proposal to compare vent hood outlet face areas to determine vent hood size.

(9) DOE seeks comment on the proposal to specify in the DOE test procedure that when testing gas- and oil-fired CWAFs, the flue gas temperatures shall be measured in the vent hood using nine individual thermocouples, or if the vent hood is 2 inches or smaller in diameter, five thermocouples may optionally be used.

(10) DOE seeks comment on its proposal to require the calculation method specified in Annex I of ANSI Z21.47–2021 be used when determining flue loss, and not the nomograph method.

(11) DOE seeks comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically with respect to DOE's estimated test costs, and DOE's initial conclusion regarding the testing costs associated with the proposed test procedure for TE2 as compared to the current test procedure.

(12) DOE requests comment on the number of small OEMs DOE identified. DOE also seeks comment on the potential costs this small manufacturer may incur.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on February 11, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 14, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend 10 CFR part 431 as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.72 by adding, in alphabetical order, a definition for ''Thermal efficiency two'' to read as follows:

§ 431.72 Definitions concerning commercial warm air furnaces.

* * * * *

Thermal efficiency two for a commercial warm air furnace equals 100 percent minus percent flue loss and jacket loss.

* * * * *

■ 3. Revise § 431.75 to read as follows:

§ 431.75 Materials incorporated by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* It may be obtained from the following sources:

(a) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or go to: *www.ahrinet.org.*

(1) ANSI/AHRI 1500–2015 (''AHRI 1500–2015''), ''Performance Rating of Commercial Space Heating Boilers'', approved November 28, 2014; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(b) *ANSI.* American National Standards Institute. 25 W 43rd Street, 4th Floor, New York, NY 10036. (212) 642–4900 or go to *www.ansi.org.*

(1) ANSI Z21.47–2021,''Gas-fired Central Furnaces'', approved April 21, 2021; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc., 1791 Tullie Circle NE, Atlanta, Georgia 30329, (404) 636–8400, or go to: *www.ashrae.org.*

(1) ANSI/ASHRAE Standard 103–2017 (''ASHRAE 103–2017''), ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'', approved June 30, 2017; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(d) *ASME.* American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, (973) 882–1170, or go to *www.asme.org.*

(1) ANSI/ASME PTC 19.3–1974 (R2004) (''ASME PTC 19.3–1974 (R2004)''), ''Part 3: Temperature Measurement, Instruments and Apparatus'', published January 1, 2004; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(e) *ASTM.* ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, (877) 909–2786, or go to *www.astm.org/.*

(1) ANSI/ASTM E230/E230M–17 (''ASTM E230/E230M–17''), ''Standard Specification for Temperature-Electromotive Force (emf) Tables for Standardized Thermocouples'', approved November 1, 2017, IBR approved for appendices A and B to this subpart.

(2) ASTM D240–09, ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter'', approved July 1, 2009; IBR approved for appendices A and B to this subpart.

(3) ASTM D396–14a, ''Standard Specification for Fuel Oils,'' approved on October 1, 2014; IBR approved for appendices A and B to this subpart.

(4) ASTM D4809–09a, ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)''; IBR approved for appendices A and B to this subpart.

(5) ASTM D5291–10, ''Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants'', approved on May 1, 2010; IBR approved for appendices A and B to this subpart.

(f) *NFPA.* National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322, 1–800–344–3555, or go to *www.nfpa.org.*

(1) NFPA 97–2003, ''Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances''; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

(g) *UL.* Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or go to: *www.ul.com.*

(1) UL 727 (''UL 727–2018''), ''Standard for Safety Oil-Fired Central Furnaces'', Tenth Edition, published January 31, 2018; IBR approved for appendices A and B to this subpart.

(2) [Reserved]

■ 4. Revise § 431.76 to read as follows:

§ 431.76 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.

(a) *Scope.* This section prescribes the test requirements used to measure the energy efficiency of commercial warm air furnaces with a rated maximum input of 225,000 Btu per hour or more.

(b) *Testing and calculations.* (1) *Thermal efficiency.* Test in accordance with appendix A to subpart D of this part when making representations of thermal efficiency.

(2) *Thermal efficiency two.* Test in accordance with appendix B to subpart D of this part when making representations of thermal efficiency two.

■ 5. Add appendix A to subpart D of part 431 to read as follows:

Appendix A to Subpart D of Part 431—Uniform Test Method for the Measurement Energy Efficiency of Commercial Warm Air Furnaces (Thermal Efficiency)

Note: On and after [date 360 days following publication of a final rule], any representations made with respect to the energy use or efficiency of commercial warm air furnaces must be made in accordance with the results of testing pursuant to this section. At that time, manufacturers must use the relevant procedures specified in this appendix, which reference ANSI Z21.47–2021, ASHRAE 103–2017, UL 727–2018, or AHRI 1500–2015. On and after [effective date 30 days following publication of a final rule] and prior to [date 360 days following publication of a final rule], manufacturers must test commercial warm air furnaces in accordance with this appendix or 10 CFR 431.76 (revised as of January 1, 2020). DOE notes that, because testing under this section is required as of [date 360 days following publication of a final rule], manufacturers may wish to begin using this amended test procedure immediately. Any representations made with respect to the energy use or efficiency of such commercial warm air furnaces must be made in accordance with whichever version is selected.

1. Incorporation by reference. DOE incorporates by reference in § 431.75, the entirety of standards AHRI 1500–2015, ANSI Z21.47–2021, ASHRAE 103–2017, ASME PTC 19.3–1974 (R2004), ASTM E230/E230M–17, ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, ASTM D5291–10, NFPA 97–2003, and UL 727–2018. However, for standards ANSI Z21.47–2021, ASHRAE 103–2017, UL 727–2018, and AHRI 1500–2015, only the enumerated provisions of those documents apply to this appendix, as follows:

1.1 ANSI Z21.47–2021

1.1.1 Sections 5.1, 5.1.4, 5.2, 5.3, 5.4, 5.5, 5.5.1, 5.6, and 7.2.1 of ANSI Z21.47–2021 as specified in section 2.1 of this appendix;

1.1.2 Section 5.40 as specified in sections 2.1 and 3.1 of this appendix; 1.1.3 Section 5.2.8 as specified in section 5.1 of this appendix;

1.1.4 Annex I as specified in section 4.1 of this appendix.

1.2 ASHRAE 103–2017

1.2.1 Sections 7.2.2.4, 7.8, and 9.2 of ASHRAE 103–2017 as specified in section 3.2 of this appendix;

1.2.2 Figure 10 of ASHRAE 103–2017 as specified in section 2.3.1 of this appendix.

1.2.3 Sections 11.3.7.1 and 11.3.7.2 of ASHRAE 103–2017 as specified in section 5.1 of this appendix.

1.3 UL 727–2018

1.3.1 Sections 2, 3, 37, 38 and 39, 40, 40.6, 41, 42, 43.2, 44, 45, and 46 of UL 727–2018 as specified in section 2.2 of this appendix;

1.3.2 Figure 40.3 of UL 727–2018 as specified in section 3.1 of this appendix.

1.4 AHRI 1500–2015

1.4.1 Section C3.2.1.1 of AHRI 1500–2015 as specified in section 2.2 of this appendix; 1.4.2 Sections C7.2.4, C7.2.5, and C7.2.6.2 of the AHRI 1500–2015of section 4.2 of this appendix.

2. Test set-up and Testing. Where this section prescribes use of ANSI Z21.47–2021 or UL 727–2018, perform only the procedures pertinent to the measurement of the steady-state efficiency, as specified in this section.

2.1 *Gas-fired commercial warm air furnaces.* The test set-up, including flue requirement, instrumentation, test conditions, and measurements for determining thermal efficiency are as specified in section 2.3 of this appendix, and the following sections of ANSI Z21.47–2021: 5.1 (General, including ASME PTC 19.3–1974 (R2004) as referenced in Section 5.1.4), 5.2 (Basic test arrangements), 5.3 (Test ducts and plenums), 5.4 (Test gases), 5.5 (Test pressures and burner adjustments), 5.6 (Static pressure and air flow adjustments), 5.40 (Thermal efficiency), and 7.2.1 (Basic test arrangements for direct vent central furnaces). If section 2.3 of this appendix and ANSI Z21.47–2021 have conflicting provisions (*e.g.,* the number of thermocouples that should be used when testing units with vent hoods two inches in diameters or smaller), follow the provisions in section 2.3. The thermal efficiency test must be conducted only at the normal inlet test pressure, as specified in Section 5.5.1 of ANSI Z21.47–2021, and at the maximum hourly Btu input rating specified by the manufacturer for the product being tested.

2.2 *Oil-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurement for measuring thermal efficiency is as specified in section 2.3 of this appendix and the following sections of UL 727–2018: 2 (Units of Measurement), 3 (Glossary, except that the definitions for combustible and non-combustible in Sections 3.11 and 3.27 shall be as referenced in NFPA 97–2003), 37 (General), 38 and 39 (Test Installation), 40 (Instrumentation, except 40.4 and 40.6.2 through 40.6.7 which are not required for the thermal efficiency test, and including ASTM E230/E230M–17 as referenced in Sections 40.6), 41 (Initial Test Conditions), 42 (Combustion Test—Burner and Furnace), 43.2 (Operation Tests), 44 (Limit Control

Cutout Test), 45 (Continuity of Operation Test), and 46 (Air Flow, Downflow or Horizontal Furnace Test). If section 2.3 of this appendix and UL 727 have conflicting provisions (*e.g.,* the number of thermocouples that should be used when testing units with vent hoods two inches in diameters or smaller), follow the provisions in section 2.3 of this appendix. Conduct a fuel oil analysis for heating value, hydrogen content, carbon content, pounds per gallon, and American Petroleum Institute (API) gravity as specified in Section C3.2.1.1 of AHRI 1500–2015, including the applicable provisions of ASTM D240–09, ASTM D4809–09a, ASTM D5291–10, and ASTM D396–14a, as referenced. The steady-state combustion conditions, specified in Section 42.1 of UL 727–2018, are attained when variations of not more than 5 °F in the measured flue gas temperature occur for three consecutive readings taken 15 minutes apart.

2.3 *Additional test set up requirements for gas-fired and oil-fired commercial warm air furnaces*

2.3.1 *Thermocouple setup for gas and oil-fired commercial warm air furnaces with flue vents that are two inches in diameter or smaller.* For units with vent hoods (*i.e.,* flue outlet hoods) two inches in diameter or smaller, the flue gas temperatures may optionally be measured using five individual thermocouples, instead of nine thermocouples.

2.3.2 *Procedure for flue gas measurements when testing units with multiple vent hoods.* For units that have multiple vent hoods record flue gas measurements (*e.g.,* flue gas temperature, CO_2 in the flue gasses) separately for each individual vent hood and calculate a weighted-average value based on the readings of all vent hoods. To determine the weighted average for each measurement, first calculate the face area of each vent hood. Then multiply the ratio of each individual vent hood's face area to the total face area of all vent hoods (*i.e.,* the face area of each individual vent hood divided by the total vent hood area) by that vent hood's respective component measurement and the sum of all of the products for all of the vent hoods to determine the weighted-average values. Use the weighted-average values to determine flue loss, and whether equilibrium conditions are met before the official test period.

3. Additional test measurements

3.1 *Determination of flue CO_2 (carbon dioxide) or O_2 (oxygen) for oil-fired commercial warm air furnaces.* In addition to the flue temperature measurement specified in Section 40.6.8 of UL 727–2018, locate one or two sampling tubes within six inches downstream from the flue temperature probe (as indicated on Figure 40.3 of UL 727–2018). If an open end tube is used, it must project into the flue one-third of the chimney connector diameter. If other methods of sampling the flue gas are used place the sampling tube so as to obtain an average sample. There must be no air leak between the temperature probe and the sampling tube location. Collect the flue gas sample at the same time the flue gas temperature is recorded. The CO_2 or O_2 concentration of the flue gas must be as specified by the manufacturer for the product being tested, with a tolerance of ±0.1 percent. Determine the flue CO_2 or O_2 using an instrument with a reading error no greater than ±0.1 percent.

3.2 *Procedure for the measurement of condensate for a gas-fired condensing commercial warm air furnace.* The test procedure for the measurement of the condensate from the flue gas under steady-state operation must be conducted as specified in Sections 7.2.2.4, 7.8, and 9.2 of ASHRAE 103–2017 under the maximum rated input conditions. This condensate measurement must be conducted for an additional 30 minutes of steady-state operation after completion of the steady-state thermal efficiency test specified in Section 2.1 of this appendix.

4. Calculation of thermal efficiency

4.1 *Gas-fired commercial warm air furnaces.* Use the calculation procedure specified in Section 5.40, Thermal efficiency, of ANSI Z21.47–2021. When determining the flue loss that is used in the calculation of thermal efficiency, the calculation method specified in Annex I shall be used.

4.2 *Oil-fired commercial warm air furnaces.* Calculate the percent flue loss (in percent of heat input rate) by following the procedure specified in Sections C7.2.4, C7.2.5, and C7.2.6.2 of the AHRI 1500–2015. The thermal efficiency must be calculated as: Thermal Efficiency (percent) = 100 percent − flue loss (in percent).

5. Procedure for the calculation of the additional heat gain and heat loss, and adjustment to the thermal efficiency, for a condensing commercial warm air furnace.

5.1 Calculate the latent heat gain from the condensation of the water vapor in the flue gas, and calculate heat loss due to the flue condensate down the drain, as specified in Sections 11.3.7.1 and 11.3.7.2 of ASHRAE 103–2017, with the exception that in the equation for the heat loss due to hot condensate flowing down the drain in Section 11.3.7.2, the assumed indoor temperature of 70 °F and the temperature term TOA must be replaced by the measured room temperature as specified in Section 5.2.8 of ANSI Z21.47–2021.

5.2 *Adjustment to the thermal efficiency for condensing furnaces.* Adjust the thermal efficiency as calculated in section 4.1 of this appendix by adding the latent gain, expressed in percent, from the condensation of the water vapor in the flue gas, and subtracting the heat loss (due to the flue condensate down the drain), also expressed in percent, both as calculated in section 5.1 of this appendix, to obtain the thermal efficiency of a condensing furnace.

■ 6. Add appendix B to subpart D of part 431 to read as follows:

Appendix B to Subpart D of Part 431–Uniform Test Method for the Measurement Energy Efficiency of Commercial Warm Air Furnaces (Thermal Efficiency Two)

Note: Representations with respect to energy use or efficiency of this equipment, including compliance certifications, must be made in terms of thermal efficiency (TE), as determined by the test procedure specified in appendix A to this subpart. In addition, manufacturers may optionally make representations of energy use or efficiency of this equipment using thermal efficiency 2 (TE2) as determined using this appendix [on or after effective date 30 days after publication of final rule].

1. Incorporation by Reference. DOE incorporates by reference in § 431.75, the entirety of standards AHRI 1500–2015, ANSI Z21.47–2021, ASHRAE 103–2017, ASME PTC 19.3–1974 (R2004), ASTM E230/E230M–17, ASTM D240–09, ASTM D396–14a, ASTM D4809–09a, ASTM D5291–10, NFPA 97–2003, and UL 727–2018. However, for standards ANSI Z21.47–2021, ASHRAE 103–2017, UL 727–2018, and AHRI 1500–2015, only the enumerated provisions of those documents apply to this appendix, as follows:

1.1 ANSI Z21.47–2021

1.1 Sections 5.1, 5.1.4, 5.2, 5.3, 5.4, 5.5, 5.5.1, 5.6, and 7.2.1 of ANSI Z21.47–2021 as specified in section 2.1 of appendix A to this subpart;

1.1.2 Section 5.40 as specified in sections 2.1 and 3.1 of appendix A to this subpart;

1.1.3 Section 5.2.8 as specified in section 5.1 of appendix A to this subpart;

1.1.4 Annex I as specified in section 4 of appendix A to this subpart;

1.1.5 Annex J as specified in sections 2.2 and 2.6 of this appendix.

1.2 ASHRAE 103–2017

1.2.1 Sections 7.2.2.4, 7.8, and 9.2 of ASHRAE 103–2017 as specified in section 3.2 of appendix A to this subpart;

1.2.2 Figure 10 of ASHRAE 103–2017 as specified in section 2.3.1 of appendix A to this subpart.

1.2.3 Sections 11.3.7.1 and 11.3.7.2 of ASHRAE 103–2017 as specified in section 5.1 of appendix A to this subpart.

1.3 UL 727–2018

1.3.1 Sections 2, 3, 37, 38 and 39, 40, 40.6, 41, 42, 43.2, 44, 45, and 46 of UL 727–2018 as specified in section 2.2 of appendix A to this subpart;

1.3.2 Figure 40.3 of UL 727–2018 as specified in section 3.1 of appendix A to this subpart.

1.4 AHRI 1500–2015

1.4.1 Section C3.2.1.1 of AHRI 1500–2015 as specified in section 2.2 to appendix A of this subpart;

1.4.2 Sections C7.2.4, C7.2.5, and C7.2.6.2 of the AHRI 1500–2015 of section 4.2 of appendix A to this subpart.

2. Testing

2.1 Setup and test the unit according to sections 1 through 5 of appendix A to this subpart, while operating the unit at the maximum nameplate input rate (*i.e.,* full load). Calculate thermal efficiency TE using the procedure specified in sections 4 and 5 of appendix A to this subpart.

2.2 For commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFs that are weatherized, or approved for resistance to wind, rain, or snow), or indoor installation

within an unheated space (*i.e.,* isolated combustion systems), determine the jacket loss using Section 5.40 and Annex J of ANSI Z21.47–2021 while the unit is operating at the maximum nameplate input.

2.3 For commercial warm air furnaces that are designed only for indoor insulation within a heated space, jacket shall be zero. For commercial warm air furnaces that are designed for indoor installation within a heated or unheated space, multiply the jacket loss determined in section 2.2 of this appendix by 1.7. For all other commercial warm air furnaces, including commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFs that are weatherized, or approved for resistance to wind, rain, or snow), multiply the jacket loss determined in section 2.2 of this appendix by 3.3.

2.4 Subtract the jacket loss determined in section 2.3 of this appendix from the TE determined in section 1.1 of this appendix to determine the full load efficiency.

2.5 Setup and test the unit according to sections 1 through 5 of appendix A to this subpart, while operating the unit at the nameplate minimum input rate (*i.e.,* part load). Calculate TE using the procedure specified in sections 4 and 5 of appendix A to this subpart.

2.6 For commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFs that are weatherized, or approved for resistance to wind, rain, or snow), or indoor installation within an unheated space (*i.e.,* isolated combustion systems), determine the jacket loss using Section 5.40 and Annex J of ANSI Z21.47–2021 while the unit is operating at the minimum nameplate input. Alternatively, the jacket loss determined in section 2.2 of this appendix at the maximum nameplate input may be used.

2.7 For commercial warm air furnaces that are designed only for indoor insulation within a heated space, jacket shall be zero. For commercial warm air furnaces that are designed for indoor installation within a heated or unheated space, multiply the jacket loss determined in section 2.6 of this appendix by 1.7. For all other commercial warm air furnaces, including commercial warm air furnaces that are designed for outdoor installation (including but not limited to CWAFs that are weatherized, or approved for resistance to wind, rain, or snow), multiply the jacket loss determined in section 2.6 of this appendix by 3.3.

2.8 Subtract the jacket loss determined in section 2.7 of this appendix from the TE determined in section 2.5 of this appendix to determine the part load efficiency.

2.9 Calculate TE2 by taking the average of the full-load and part-load.

[FR Doc. 2022–03484 Filed 2–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–TP–0003 and EERE–2022–STD–0001]

RIN 1904–AE95 and 1904–AE97

Energy Conservation Program: Test Procedure for Dedicated-Purpose Pool Pumps and Energy Conservation Standards for Dedicated-Purpose Pool Pumps; Reopening of Comment Period

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

ACTION: Request for information; reopening of public comment period.

SUMMARY: On January 24, 2022, the U.S. Department of Energy (''DOE'') published two requests for information (''RFIs'') regarding dedicated-purpose pool pumps. DOE published a RFI regarding test procedures for dedicated-purpose pool pumps and a RFI regarding energy conservation standards for dedicated-purpose pool pumps. The RFIs each provided an opportunity for submitting written comments, data, and information on the proposal by February 23, 2022. DOE received a request from the Pool and Hut Tub Alliance on February 9, 2022, and a joint request from the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison on February 11, 2022, each asking DOE to extend the public comment periods for both RFIs for 30 additional days. DOE has reviewed these requests and is reopening the public comment periods to allow comments to be submitted until March 9, 2022.

DATES: The comment periods for the RFIs published on January 24, 2022 (87 FR 3457; 87 FR 3461) is reopened. DOE will accept comments, data, and information regarding these RFIs received no later than March 9, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–TP–0003 for the test procedure RFI and EERE–2022–BT–STD–0001 for the energy conservation standard RFI, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: DPPP2022TP0003@ee.doe.gov* for the test procedure RFI. *DPPP2022STD0001@ee.doe.gov* for the energy conservation standards RFI. For the test procedure RFI, include the docket number EERE–2022–BT–TP–0003 or regulatory information number (''RIN'') 1904–AE95 in the subject line of the message. For the energy conservation standards RFI, include the docket number EERE–2022–BT–STD–0001 or regulatory information number (''RIN'') 1904–AE97 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted.

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

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

The docket web pages can be found at *www.regulations.gov/docket?D=EERE-2022-BT-TP-0003* and *www.regulations.gov/docket?D=EERE-2020-BT-STD-0001* for dedicated-purpose pool pump test procedure and energy conservation standards, respectively. The docket web pages contain instructions on how to access all documents, including public comments, in each docket.

FOR FURTHER INFORMATION CONTACT:

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

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–2588; Email: *amelia.whiting@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: On January 24, 2022, DOE published a RFI undertaking a review to determine whether amendments are warranted for the test procedure for dedicated-purpose pool pumps. 87 FR 3457. DOE identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. 87 FR 3457, 3459–3461. On this date, DOE also published a RFI initiating an effort to determine whether to amend the current energy conservation standards for dedicated-purpose pool pumps. 87 FR 3461 (January 24, 2022) The RFI solicits information from the public to help DOE determine whether amended standards for dedicated-purpose pool pumps would result in significant energy savings and whether such standards would be technologically feasible and economically justified. 87 FR 3461. Both RFIs had a comment period deadline that closed on February 23, 2022.

Interested parties in the matter, the Pool and Hot Tub Alliance (''PHTA'') requested an extension of the public comment period for 30 additional days to give time to properly respond to the technical nature of the questions posed in both RFIs. PHTA explained that without the extension, the industry will be unable to provide all the data and information being requested within the current comment period. (PHTA, EERE–2022–BT–TP–0003, No. 3 at p. 1; PHTA, EERE–2022–BT–STD–0001, No. 3 at p. 1) [1] Also, the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (''Joint Requesters'') requested an extension of the public comment period for both RFIs for 30 additional days. The joint requestors commented that the extension is necessary due to the extent of research and outreach needed to adequately respond to the RFIs and that they support PHTA in the request for an additional 30-day extension. (Joint Requesters, EERE–2022–BT–TP–0003, No. 2 at p. 1, Joint Requesters, EERE–2022–BT–STD–0001, No. 2 at p.1)

DOE has reviewed the requests and is reopening the comment period to allow additional time for interested parties to submit comments. In light of the submitted requests, DOE believes that additional time is warranted, and that reopening the comment period until March 9, 2022 is sufficient. Therefore, DOE is reopening the comment period for both RFIs until March 9, 2022.

Signing Authority

This document of the Department of Energy was signed on February 17, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 22, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–04050 Filed 2–24–22; 8:45 am]

BILLING CODE 6450–01–P

[1] The parenthetical reference provides a reference for information located in DOE's rulemaking dockets. (Docket No. EERE–2022–BT–TP–0003 which is maintained at *www.regulations.gov/#!docketDetail;D=EERE-2022-BT-TP-0003* and Docket No. EERE–2022–BT–STD–0001 which is maintained at *www.regulations.gov/#!docketDetail;D=EERE-2022-BT-STD-0001).* The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0141; Project Identifier MCAI–2021–01052–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by a report of an oxygen-fed ground fire event potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. This proposed AD would require an inspection for discrepancies of the observer's oxygen mask stowage box and storage compartment, oxygen hose connections and routing, and the associated electrical harness, and corrective actions if necessary; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 11, 2022.

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

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

For service information identified in this NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0141; or in person at Docket

Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0141; Project Identifier MCAI–2021–01052–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–32, dated September 17, 2021 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0141.

This proposed AD was prompted by a report of an oxygen-fed ground fire event potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. An investigation determined that the oxygen supply hose connecting to the rear of the observer oxygen mask box assembly could be subject to chafing damage. The FAA is proposing this AD to address possible damage to the observer oxygen mask supply hoses and a potential for an oxygen-fed fire in the vicinity of the observer oxygen mask storage compartment. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ has issued Service Bulletin 601R–35–022, Revision A, dated October 12, 2021. This service information describes procedures for doing an general visual inspection for discrepancies (including elbow fitting clocking (rotation), sealing tape installed in a certain location, wire damage (*e.g.,* cuts, nicks, kinks, insulation damage)) of the observer's oxygen mask stowage box and storage compartment, the observer's mask oxygen hose connections, the hose routing, and the associated electrical harness, and applicable corrective actions; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant. Corrective actions include re-positioning the elbow fitting, removing sealing tape, and repairing wiring. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 407 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 Work-hours × $85 per hour = up to $765	$115	$880	$358,160

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0141; Project Identifier MCAI–2021–01052–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report of an oxygen-fed ground fire event potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. An investigation determined that the oxygen supply hose connecting to the rear of the observer oxygen mask box assembly could be subject to chafing damage. The FAA is issuing this AD to address possible damage to the observer oxygen mask supply hoses and a potential for an oxygen-fed fire in the vicinity of the observer oxygen mask storage compartment.

(f) Compliance

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

(g) Required Actions

Within 4,000 flight hours or 24 months, whichever occurs first, after the effective date of this AD, do the actions in paragraphs (g)(1) and (2) of this AD:

(1) Do a general visual inspection for discrepancies of the observer's oxygen mask stowage box and storage compartment, the observer's mask oxygen hose connections, the hose routing, and the associated electrical harness, in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision A, dated October 12, 2021. If any discrepancies are found, before further flight, do all applicable corrective actions, in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision A, dated October 12, 2021.

(2) Modify the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant, in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision A, dated October 12, 2021.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Service Bulletin 601R–35–022, dated June 1, 2021.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–32, dated September 17, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0141.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on February 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–03939 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0093; Project Identifier AD–2021–00987–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain web lap splices in the center dome apex of the aft pressure bulkhead are subject to widespread fatigue damage (WFD). This proposed AD would require a general visual inspection for existing repairs at the aft pressure bulkhead, repetitive detailed, high frequency eddy current (HFEC), and low frequency eddy current (LFEC) inspections, and repair if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 11, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0093.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0093; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dirk Visser, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3994; email: *Dirk.J.Visser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0093; Project Identifier AD–2021–00987–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dirk Visser, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3994; email: *Dirk.J.Visser@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

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

An FAA final rule (''Aging Airplane Program: Widespread Fatigue Damage;'' 75 FR 69746, November 15, 2010) became effective on January 14, 2011, and amended 14 CFR parts 25, 26, 121, and 129 (commonly known as the WFD rule). The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. DAHs of existing and future airplanes subject to the WFD rule are required to establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend

on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The FAA has received an evaluation by the DAH indicating that certain web lap splices in the center dome apex of the aft pressure bulkhead are subject to WFD. During cycle tests of The Boeing Company Model 737–800 series airplanes' Fatigue Test Article for the 0.032 inch web (the configuration for The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplane having line numbers (LN) 1 through 1166), cracks were found in three of the seven aft pressure bulkhead web lap splices in several of the fastener rows common to the center dome apex. The pull down stresses were caused by the single rivet located in the area where each of the webs transition up 0.032 inches. Airplanes having LN 1167 through 1755 inclusive have a different fastener pattern than airplanes having LN 1 through 1166 inclusive, but are subject to the same unsafe condition. There has been only one reported finding on airplanes having LN 1167 through 1755 inclusive and cracking was found in five of the seven webs. The FAA issued AD 2021–21–09, Amendment 39–21769 (86 FR 61679, November 8, 2021) to address fatigue cracks in the webs of the aft pressure bulkhead on The Boeing Company Model 737–600, –700, –700C, –800, and –900 airplanes having LN 1 through 1755 inclusive.

The Boeing Company Model 737–600, –700, –700C, –800, and –900 airplanes having LN 1756 and subsequent (which are addressed in this proposed AD) have a 0.040 inch web thickness. Following the findings in the earlier LNs, supplemental testing showed an increase in the pull down stress for the 0.040 inch aft pressure bulkhead configuration in the same transition area as seen in the 0.032 inch configuration. The aft pressure bulkhead web lap splice fasteners are subjected to fuselage pressurization fatigue cycles and additional clamp-up stress caused from the assembly process. The clamp up stresses, combined with the pressurization, cause the existing airworthiness limitations inspections for Principle Structural Element 53–80–01–3 (visible web rows) and 53–80–01–7 (hidden web rows) to be inadequate. Therefore, the FAA determined that additional inspections of the 0.040 inch thick web lap splices at station 1016 aft pressure bulkhead center dome apex for any crack are necessary to mitigate the identified unsafe condition. This condition, if not addressed, could result in reduced structural integrity of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021. This service information specifies procedures for a general visual inspection for existing repairs at the aft pressure bulkhead, repetitive detailed, HFEC, and LFEC inspections for any crack, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0093.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,187 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for repairs	1 work-hour × $85 per hour = $85.	$0	$85	$100,895.
Repetitive detailed, HFEC, and LFEC inspections.	Up to 9 work-hours × $85 per hour = $765 per inspection cycle.	Up to $0	Up to $765 per inspection cycle.	Up to $908,055 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0093; Project Identifier AD–2021–00987–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain web lap splices in the center dome apex of the aft pressure bulkhead are subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address fatigue cracks in the webs of the aft pressure bulkhead, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1403, dated August 26, 2021, which is referred to in Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021, uses the phrase ''the original issue date of the Requirements Bulletin 737–53A1403 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1403 RB, dated August 26, 2021, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Dirk Visser, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3994; email: *Dirk.J.Visser@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on February 3, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–03968 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0345]

Vessel Traffic Assessment: Near Point Mugu, San Francisco Bay, Humboldt Bay, and Morro Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of inquiry; request for comments.

SUMMARY: On July 28, 2021, U.S. Coast Guard (USCG) Pacific Area Command issued the Pacific Coast–Port Access Route Study (PAC–PARS) in the **Federal Register** directing USCG District Eleven and USCG District Thirteen to complete a PARS on the Pacific coast. In support of the PAC–PARS, USCG District Eleven has identified four areas to evaluate activities within its area of responsibility. USCG District Eleven requests public comments regarding vessel traffic patterns in the areas near Point Mugu and south of the Channel Islands in the Pacific Missile Range, San Francisco Bay, and the Bureau of Ocean Energy Management (BOEM) Humboldt Bay and Morro Bay offshore Wind Energy Areas (WEAs). Information received will be used to make recommendations regarding establishing safety routing measures to improve waterway operations and vessel movement along the California coast.

DATES: Comments and related material must be received on or before May 26, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–

2021–0345 using the Federal portal *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of study, call or email Mr. Tyrone Conner, Eleventh Coast Guard District (dpw), U.S. Coast Guard; telephone (510) 437–2968, email *Tyrone.L.Conner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
U.S.C. United States Code
PAC Pacific Area Command
PARS Port Access Route Study
PAC–PARS Pacific Coast–Port Access Route Study
EEZ Exclusive Economic Zone
RNA Regulated Navigation Areas
TSS Traffic Separation Scheme
USCG United States Coast Guard
BOEM Bureau of Ocean Energy Management
WEA Wind Energy Area
NOI Notice of Inquiry
IMO International Maritime Organization
DOD Department of Defense
OCS Outer Continental Shelf

II. Background and Purpose

The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate safe access routes for the movement of vessel traffic proceeding to or from ports or places along the western seaboard of the United States and to determine whether Fairways and Traffic Separation Schemes for vessels and/or International Maritime Organization (IMO) recommended routes should be established, adjusted and/or modified. The goal of the Pacific Coast–PARS (PAC–PARS) is to enhance maritime safety by examining shipping routes and waterway uses, and, to the extent practicable, reconcile the paramount right of navigation within designated port access routes with other waterway uses such as the development of aquaculture farms, offshore renewable energy, commercial spaceports/re-entry sites, marine sanctuaries, ports supporting Panamax vessels, potential LNG ports, Pacific Missile Range, and additional commercial vessel traffic. During the preliminary information-gathering portion, the areas near Point Mugu and south of the Channel Islands in the Pacific Missile Range, San Francisco Bay, and both BOEM WEAs were identified as high-interest zones for traffic congestion and navigation safety.

A. Requirements for PARS: Chapter 700, Ports and Waterways Safety, of Title 46 of the United States Code, specifically 46 U.S.C. 70003 directs the Secretary of the department in which the Coast Guard resides, in order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, to designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

46 U.S.C. 70003 requires the Secretary to: (1) Undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or that may otherwise be considered and publish notice of such undertaking in the **Federal Register**; (2) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration, including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deep-water ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing; and (3) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

46 U.S.C. 70003 requires the Secretary to proceed expeditiously to complete any study undertaken; and after completion of such a study, to promptly issue a notice of proposed rulemaking for the designation contemplated or publish in the **Federal Register** a notice of rulemaking that no designation is contemplated as a result of the study and the reason for such determination.

B. Previous Port Access Route Studies: The approaches to San Francisco, CA, were last studied in 2009, and the final results were published in the **Federal Register** on June 20, 2011 (76 FR 35805). The study was conducted to evaluate the continued applicability and the potential need for modifications to the vessel routing to help reduce the risk of marine casualties and increase the efficiency of vessel traffic in the study area. All USCG publications regarding this study can be found by searching docket USCG–2009–0576 on *https://www.regulations.gov.* The Port Access Route Study for the Strait of Juan de Fuca, Haro Strait, Boundary Pass, Rosario Strait, the Strait of Georgia, and adjacent waters was completed in November 2000, published in the **Federal Register** on January 22, 2001 (66 FR 6514). The study was conducted to evaluate the need for modifications to current vessel routing and traffic management measures due to increased maritime activities. However, there has never been a PARS conducted for the entire Pacific Coast of the United States designed to analyze all vessel traffic proceeding to and from all the ports and transiting through the United States Exclusive Economic Zone (EEZ).

C. Need for a New Port Access Route Study: Given the current development of aquaculture farms, offshore renewable energy, commercial spaceports/re-entry sites, expansion of marine sanctuaries, development of ports supporting Panamax vessels, potential LNG ports, National Security Measures, DOD testing and training, and commercial traffic, the Coast Guard is conducting the PAC–PARS (Washington, Oregon, and California). This PAC–PARS will focus on the coastwise shipping routes and near coastal users of the Pacific Ocean between the coastal ports and the approaches to coastal ports within the EEZ. This PAC–PARS will help the Coast Guard determine what impact, if any, the siting, construction, and operation of new developments may have on existing near coastal users of the Pacific Ocean. To ensure the safety of navigation, the Coast Guard will determine the impacts of rerouting traffic, funneling traffic, and placement of structures that may obstruct navigation. Some of the effects to be considered are increased vessel traffic density, offshore vessel routing, fixed navigation obstructions, underwater cable hazards, and economic impacts. Analyzing the various results will require a thorough understanding of the interrelationships of shipping, other commercial and recreational uses, Outer Continental Shelf (OCS) development, and port operations.

III. Information Requested

Timelines, Study Area, Focus, and Process: Coast Guard Eleventh District will conduct further analysis in the following areas, which may take approximately three to six months to complete. The study will focus on vessel traffic and navigation mitigation

techniques to improve and support safe navigation transits within the area. It will encompass the areas bound by the aforementioned coordinates.

This is a Notification of Inquiry (NOI) to assess the vessel traffic and routing in the waters indicated by the supplemental PDF, ''Chart of District Eleven PAC–PARS Focus Areas'' (available in the docket), and bound by the following coordinates:

Area 1: BOEM HUMBOLDT BAY WEA:
40–37.06N 124–35.22W;
40–37.62N 125–15.54W;
41–14.16N 125–15.54W;
41–13.61N 124–15.42W.
Area 2: SAN FRANCISCO BAY:
36–16.27N 121–54.24W;
36–10.36N 123–18.54W;
38–06.78N 124–29.34W;
38–33.93N 123–30.12W.
Area 3: BOEM MORRO BAY WEA:
35–53.90N 122–53.22W;
35–57.09N 121–45.18W;
35–20.35N 121–17.04W;
35–18.54N 122–24.60W.
Area 4: POINT MUGU:
33–46.29N 120–07.80W;
33–53.04N 119–22.80W;
33–28.62N 118–36.48W;
33–2.922N 118–35.10W;
32–50.54N 119–17.58W;
32–13.79N 121–44.22W;
34–19.54N 123–07.02W;
35–14.83N 121–01.86W;
34–59.52N 120–41.52W;
33–58.98N 120–39.48W.

We will analyze current and historical vessel traffic, fishing vessel information, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate by submitting comments in response to this proposed rule.

We will publish the results of the inquiry in the **Federal Register** under the same docket USCG–2021–0345. It is possible that the results may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic. The recommendations may consider the development of future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations: We are attempting to determine the scope of any safety concerns associated with vessel transits in the focus areas. The information gathered during the study should help us identify concerns and mitigating solutions. Considerations might include: (1) Maintain the current vessel routing measures; (2) modify the existing traffic separation schemes; (3) create one or more precautionary areas; (4) create one or more inshore traffic zones; (5) establish area(s) to be avoided; (6) create deep-draft routes; (7) establish Regulated Navigation Areas (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; (8) identify any other appropriate ships' routing measures; (9) use this study for future decisions on routing measures or other maritime traffic considerations and; (10) use this study to inform other agencies concerning the impacts of their future endeavors.

Questions: To help us conduct the area study, we request information that will help answer the following questions, although comments on other issues addressed in this notice are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under ''Public Participation and Request for Comments'' below.

These questions were generated with the purpose of eliciting information for the four focus areas alone. Any information provided should be directly related to one or more of the four focus areas.

General Questions (all four areas):

(1) What are the demographics of the vessel your organization represents? (Vessel length, vessel draft, vessel type, etc.)

(2) Which of the four areas do you transit through? Where are your transit routes?

(3) What criteria are used in determining your transit routes?

(4) How are your vessel routes affected by seasonal weather patterns, storms, or other adverse environmental conditions you have experienced in the focus areas? Please explain.

(5) What navigational hazards do vessels operating in the focus areas face? Please describe.

(6) Are there strains on the current vessel routing systems?

(7) Do you perceive increasing traffic density to cause increased navigational risk?

(8) What is your prediction of future growth with traffic density? Please describe.

(9) What is the minimum safe width of coastwise traffic separation schemes and lanes considering the traffic density and other conditions of the focus areas?

(10) Are modifications to existing vessel routing measures needed to address hazards and improve traffic efficiency in the study area? If so, please describe.

(11) Is your organization open to traffic management strategies (TSS, Fairways, IMO recommended routes)? Please elaborate.

(12) What costs and benefits are associated with traffic management strategies?

(13) What traffic management strategies do you think are most cost-effective?

(14) What traffic management strategies do you think are most detrimental to cost-effectiveness?

(15) What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

(16) What improvements to waterway management would you like to see? If none, why?

(17) What current waterway operations affect navigation? How (details please)?

(18) Do the marine sanctuaries affect your navigation routing plans?

(19) What is a safe and appropriate distance between vessel traffic and major projects such as aquaculture farms and wind farms?

(20) Are there any results you would like to see in the completed PAC–PARS study?

(21) Would you be interested in attending virtual presentations of findings?

Pacific Missile Range off Point Mugu and Vandenberg Space Force Base:

(22) Do you typically transit to the north or to the south of the Channel Islands?

(23) Do the operations surrounding the Pacific Missile Range off Vandenberg Space Force Base and the Point Mugu zone affect your routing plans and vessel movement? How?

(24) How often are you displaced by hazardous operations, testing, and military training in the Pacific Missile Range? Please describe.

BOEM Wind Energy Areas (Humboldt Bay and Morro Bay)

(25) What navigational challenges do you foresee with the implementation of BOEM's Wind Energy Areas (WEAs)?

(26) Do you currently transit through the proposed BOEM WEAs? Please describe.

(27) Do you think the Coast Guard should create designated fairways, traffic separation schemes for vessels, or exclusion/restricted areas around wind farms?

(28) Would you prefer wind farm exclusion/restricted areas where you can navigate anywhere *outside* of the wind farm, or would you prefer to restrict your navigation *inside* designated coastwise fairways and traffic separation schemes *through* the wind farms? Please explain.

Is there any additional information, unrelated to any specific question

above, that you believe the USCG needs to consider?

IV. Public Participation and Request for Comments

We encourage you to submit comments in response to this notification of inquiry through the Federal Decision Making portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0345 in the search box, and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this notice of inquiry as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: February 17, 2022.

B.K. Penoyer,

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

[FR Doc. 2022–03990 Filed 2–24–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2022–0161; FRL–9410–01–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities—January 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, through the Federal eRulemaking Portal at *http://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 *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Amended Tolerance Exemptions for Inerts (Except PIPS)

• *IN–11603.* (EPA–HQ–OPP–2021–0774). Exponent, Inc (1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036) on behalf of Gaylord Chemical Company (106 Galeria Boulevard, Slidell, LA 70458) requests to amend an exemption from the requirement of a tolerance for residues of dimethyl sulfoxide (CAS Reg. No. 67–68–5) for use as an inert ingredient (solvent, co-solvent) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920 without limitation. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

B. New Tolerance Exemptions for Inerts (Except PIPS)

• *IN–11632.* (EPA–HQ–OPP–2021–0866). Technology Sciences Group Inc. (1150 18th Street NW, Suite 1000, Washington, DC 20036) on behalf of Lanxess Corporation (111 RIDC Park West Drive, Pittsburgh, PA 15275) requests to establish an exemption from the requirement of a tolerance for residues of tris (2-ethylhexyl) phosphate (CAS Reg. No. 78–42–2) for use as an inert ingredient (adjuvant) in pesticide formulations applied to growing crops pre- and post-harvest under 40 CFR 180.910 without limitation. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

C. Notice of Filing—New Tolerances for Non-Inerts

• *PP 1E8949.* (EPA–HQ–OPP–2021–0646). Nichino America, Inc., 4550 Linden Hill Rd., Suite 501, Wilmington, DE 19808, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, benzpyrimoxan, in or on rice, grain at 0.9 parts per million (ppm). The LC–MS/MS analytical method was used in the residue studies. The method involves extraction of benzpyrimoxan and NNI–1501–2–OH from crop matrices and LC–MS/MS detection and was validated using unhulled rice, unpolished (brown) rice, and rice straw to measure and evaluate the chemical benzpyrimoxan. Contact: RD.

• *PP 1E8961.* (EPA–HQ–OPP–2022–0101). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.690 for residues of mandestrobin, 2-[(2,5-dimethylphenoxy)methyl]-α-methoxy-N-methylbenzeneacetamide in or on the raw agricultural commodity Vegetable, tuberous and corm, except potato, subgroup 1D at 0.01 parts per million. An independently validated analytical method has been submitted for analyzing the chemical. Contact: RD.

Authority: 21 U.S.C. 346a.

Dated: February 9, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–04019 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4192–CN]

RIN 0938–AU30

Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on January 12, 2022 entitled ''Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs.''

FOR FURTHER INFORMATION CONTACT: Marna Metcalf-Akbar, (410) 786–8251. Melissa Seeley, (212) 616–2329.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022–00117 of January 12, 2022 (87 FR 1842), there were several technical errors that are identified and corrected in this correcting document.

II. Summary of Errors

On page 1899, in discussion of the proposed regulations text changes for the assessment of past performance, we made an error in a regulatory citation.

On page 1925, in our discussion of the information collection requirements for limiting certain Medicare Advantage contracts to dual special needs plans (D–SNPs), we inadvertently omitted language regarding when we will submit information on the number of respondents and the time estimates to the public and OMB.

III. Correction of Errors

In FR Doc. 2022–00117 of January 12, 2022 (87 FR 1842), make the following corrections:

1. On page 1899, first column, first full paragraph, line 3, the reference ''§ 422.505(n)'' is corrected to read ''§ 423.505(n)''.

2. On page 1925, first column, after the first full paragraph that begins with the phrase ''The burden for an initial Part D'', the text is corrected by adding the following paragraph to read as follows:

''While we anticipate changes to the number of respondents and our active time estimates for the Part C and Part D applications, if this proposal is finalized we would revise control numbers 0938–0935 (CMS–10237) and 0938–0936 (CMS–10137) for the 2025 plan year application and prior to the effective date of the requirement. The CMS–10237 and CMS–10137 collection of information materials would be made available to the public for review/comment under the standard PRA process which includes the publication of 60- and 30-day **Federal Register** notices and the posting of the collection of information documents on our PRA website.''

Karuna Seshasai,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2022–03966 Filed 2–24–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220222–0052]

RIN 0648–BL15

Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; 2022 Specifications and Trip Limit Adjustment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes Atlantic spiny dogfish specifications for the 2022 fishing year, and an adjustment to the commercial trip limit, as recommended by the Mid-Atlantic and New England Fishery Management Councils. This action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while enabling optimum yield, using the best scientific information available. This rulemaking also informs the public of the proposed fishery action and provides an opportunity for comment.

DATES: Comments must be received by March 14, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0008, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov,* and enter ''NOAA–NMFS–2022–0008'' in the Search box;

2. Click the ''Comment'' icon, complete the required fields; and

3. Enter or attach your comments.

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

Copies of the Supplemental Information Report (SIR) and other supporting documents for this action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic and New England Fishery Management Councils jointly manage the Atlantic Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council acting as the administrative lead. Additionally, the Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The federal FMP requires the specification of an acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and a coastwide commercial quota. These limits and other related management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action proposes status quo specifications for fishing year 2022, and an increased commercial trip limit for the Atlantic spiny dogfish fishery, as recommended by the Councils.

The spiny dogfish fishery is currently operating under multi-year specifications for fishing years 2021 and 2022 based on a 2020 assessment update and the Mid-Atlantic Council's updated risk policy. The 2021 trawl survey conducted by the Northeast Fisheries Science Center showed little change from recent years in the spiny dogfish stock. As a result, the Mid-Atlantic Council's Scientific and Statistical Committee (SSC), the Spiny Dogfish Monitoring Committee, and the Joint Spiny Dogfish Committee (which includes members from both Councils) all agreed that no changes are necessary to the previously-projected specifications for fishing year 2022. Upon review, both Councils also recommended status quo catch specifications for 2022.

During meetings of the Spiny Dogfish Advisory Panel and Committees in 2021, industry representatives requested an increase in the federal commercial trip limit as a way to provide more economic stability and opportunity to fully achieve the commercial quotas provided to the fishery. The commercial fishery has consistently harvested less than 60 percent of the coastwide quota in the past five years (with one exception in 2019 when there was a substantially smaller quota). Changes to the trip limit have been considered in recent years without action to this point. The different management committees decided that a moderate increase of 25 percent could provide the requested flexibility and opportunity while minimizing risk of negative impacts to the resource or markets. Both Councils reviewed and approved this decision at their respective meetings in October and December 2021, and recommended increasing the 6,000-lb (2,722-kg) commercial trip limit to 7,500 lb (3,402 kg) through this proposed action.

Proposed Measures

This action proposes the Councils' recommendations for status quo 2022 spiny dogfish specifications (Table 1), and a 25-percent increase to the commercial trip limit from 6,000 lb (2,722 kg) per trip to 7,500 lb (3,402 kg) per trip. These proposed measures are consistent with the SSC, Joint Committee, and Monitoring Committee recommendations (Table 1).

TABLE 1—PROPOSED STATUS QUO SPINY DOGFISH FISHERY SPECIFICATIONS FOR FISHING YEAR 2022

	2021–2022	
	Million lb	Metric tons
ABC	38.58	17,498
ACL = ACT	38.48	17,453
TAL	29.68	13,461
Commercial Quota	29.56	13,408

There is a research track stock assessment in progress for Atlantic spiny dogfish. This assessment is expected to inform development of the next set of specifications beginning in fishing year 2023.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Councils reviewed the proposed regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Councils conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would maintain status quo specifications for fishing year 2022, and would increase the vessel possession limit of spiny dogfish per trip by 25 percent.

This proposed action would affect entities that participate in commercial spiny dogfish fishing (those that hold commercial spiny dogfish permits). Vessels may hold multiple fishing permits and some entities own multiple vessels and/or permits. According to the Northeast Fisheries Science Center commercial ownership database, 1,934 separate vessels held commercial spiny dogfish permits in 2020, the most recent year of fully available data. A total of 1,513 commercial entities owned those permitted vessels, and of those entities, 1,504 are categorized as small businesses, and 9 as large businesses.

The proposed specifications are expected to provide similar fishing opportunities when compared to the previous fishing year as no annual catch limits are changing. The trip limit adjustment is expected to provide increased operational flexibility and opportunity to fully harvest the coastwide quota without increasing risk to the resource or substantially changing fishing behavior. Entities issued a commercial spiny dogfish permit may experience a slight positive impact related to the potential for higher landings each trip. However, effort in the fishery remains dependent on market conditions and pricing rather than management measures such as trip limits. As such, the proposed action is not expected to have an impact on the way the fishery operates or the revenue of small entities.

Overall, analyses indicate that the overall economic impact of this proposed action is expected to be slightly positive, and that these measures are not expected to substantially change fishing effort, the risk of overfishing, prices/revenues, or fishery behavior. Therefore, the Councils concluded, and NMFS agrees, that this action would not have a significant adverse impact on a substantial number of small businesses. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action would not establish any new reporting or record-keeping requirements.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.235, revise paragraph (a)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) * * *

(1) Possess up to 7,500 lb (3,402 kg) of spiny dogfish per trip; and

* * * * *

[FR Doc. 2022–04042 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 38
Friday, February 25, 2022

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

Food Safety and Inspection Service

[Docket No. FSIS–2022–0004]

Notice of Request To Revise an Approved Information Collection: Import of Undenatured Inedible Product and Samples for Laboratory Examination, Research, Evaluative Testing, or Trade Show Exhibition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to revise the approved information collection regarding the importation of undenatured inedible product, and samples of imported product for laboratory examination, research, evaluative testing, or trade show exhibition. The approval for this information collection will expire on July 31, 2022. FSIS is reducing the total burden estimate by 14,441 hours because the number of applications for importing meat, poultry or egg products samples destined for laboratory examination, research, evaluative testing, or trade show exhibition has decreased.

DATES: Submit comments on or before April 26, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202)205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Import of Undenatured Inedible Product and Samples for Laboratory Examination, Research, Evaluative Testing, or Trade Show Exhibition.

OMB Number: 0583–0161.

Expiration Date: 07/31/2022.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS' regulations allow undenatured inedible meat and egg products to be imported into the United States for industrial use or animal food purposes if the products meet the requirements in 9 CFR 325.11(e), 555.5, or 590.45(d). FSIS' regulations also require foreign governments to petition FSIS for approval to import undenatured inedible egg products into the United States (9 CFR 590.45(d)).

Firms importing undenatured inedible meat and egg products to the United States are to complete FSIS Form 9540–4, ''Permit Holder—Importation of Undenatured Inedible Product.'' FSIS uses the information on Form 9540–4 to keep track of the movement of imported undenatured inedible meat and egg products.

Additionally, imported meat, poultry, and egg product samples destined for laboratory examination, research, evaluative testing, or trade show exhibition are not subject to FSIS import reinspection requirements (9 CFR 327.19, 381.207, 557.19, and 590.960). Firms are required to complete FSIS Form 9540–5, ''Notification of Intent to Import Meat, Poultry, Or Egg Products 'Samples for Laboratory Examination, Research, Evaluative Testing or Trade Show Exhibition' '' to ensure that samples imported into the United States are not mixed with product that will be sold or distributed in commerce.

FSIS is requesting a revision to the approved information collection regarding the importation of undenatured inedible products and imported samples for the laboratory examination listed above. The approval for this information collection will expire on July 31, 2022. FSIS is reducing the total burden estimate by 14,441 hours because the number of applications for importing meat, poultry or egg products samples destined for laboratory examination, research, evaluative testing, or trade show exhibition has decreased.

FSIS has made the following estimates based upon an information collection assessment:

Respondents: Importers.

Estimate of Burden: FSIS estimates that it will take respondents an average of 44.97 hours annually to complete and submit these forms to FSIS.

Estimated Number of Respondents: 211.

Estimated Number of Annual Responses per Respondent: 156.

Estimated Total Annual Burden on Respondents: 9,489 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will

also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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Paul Kiecker,

Administrator.

[FR Doc. 2022–04028 Filed 2–24–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2022–0003]

Notice of Request To Renew an Approved Information Collection: Registration Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection regarding business registration requirements. The approval for this information collection will expire on July 31, 2022. FSIS is not making any changes to the approved collection.

DATES: Submit comments on or before April 26, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0003. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and

Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements.

OMB Number: 0583–0128.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

The FMIA (21 U.S.C. 643) and the PPIA (21 U.S.C. 460(c)) prohibit any person, firm, or corporation from engaging in commerce as a meat or poultry products broker; renderer; animal food manufacturer; wholesaler of livestock or poultry carcasses or parts; or public warehouseman storing such articles in or for commerce; or from engaging in the business of buying, selling, or transporting in commerce, or importing any dead, dying, or disabled or diseased livestock or poultry or parts of the carcasses of livestock or poultry that died otherwise than by slaughter, unless it has registered its business with FSIS.[1] Parties required to register with FSIS must submit FSIS Form 5020–1, *Registration of Meat and Poultry Handlers,* with their name, the address of all locations at which they conduct the business that requires them to register, and all trade or business names under which they conduct these businesses. In addition, parties required to register with FSIS must do so within 90 days after they begin to engage in any of the businesses that require registration. They must also notify FSIS in writing when information on the form changes.

FSIS is requesting renewal of the information collection regarding business registration requirements. The approval for this information collection will expire on July 31, 2022. FSIS is making no changes to the approved collection. FSIS has made the following estimates based upon an information collection assessment:

Respondents: Meat and poultry handlers (*i.e.,* brokers, renderers, animal food manufacturers, wholesalers, public warehousemen, and firms handling dead, diseased, disabled, and dying animals).

Estimate of Burden: FSIS estimates that it will take respondents an average of 15 minutes to complete and submit this form to FSIS.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 300 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

[1] Official establishments that receive mandatory FSIS inspection of their slaughtering or processing operations are not required to register (9 CFR 320.5(c) and 381.179(c)).

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

Paul Kiecker,

Administrator.

[FR Doc. 2022–04026 Filed 2–24–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Breakfast Program

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This is a revision of a currently approved collection, which FNS employs to determine public participation in the School Breakfast Program.

DATES: Written comments must be received on or before April 26, 2022.

ADDRESSES: Comments may be sent to: Jeffrey Warner, School Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to the attention of Jeffrey Warner at *jeffrey.warner@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jeffrey Warner, School Programs Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, at 703–605–4372 or at *jeffrey.warner@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: 7 CFR part 220, School Breakfast Program.

Form Number: N/A.

OMB Number: 0584–0012.

Expiration Date: April 30, 2022.

Type of Request: Revision of a currently approved collection.

Abstract: Section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) authorizes the School Breakfast Program (SBP) as a nutrition assistance program in schools, and requires that ''Breakfasts served by schools participating in the SBP under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.'' This information collection is required to administer and operate this program in accordance with the Richard B. Russell National School Lunch Act (NSLA). The Program is administered at the State and school food authority (SFA) levels, and operations include the submission of applications and agreements, submission of claims for reimbursements, and maintenance of records. The reporting and recordkeeping burden associated with this revision is summarized in the charts below. The total estimated number of burden hours associated with SBP requirements has decreased by 121,094 annual burden hours due to the use of updated participation data from fiscal year 2020. This collection has reporting forms associated with it, such as the ''Report of School Program Operations'' form (FNS–10), that are approved and included in the information collection titled ''Food Programs Reporting System (FPRS)'' (OMB #: 0584–0594, expiration date July 31, 2023). The FPRS information collection accounts for the reporting burden associated with such forms, while this collection covers the burden associated with the maintenance of FNS forms, or regulatory record keeping requirements. All of the reporting and recordkeeping requirements associated with the SBP and included in this collection are currently approved by the Office of Management and Budget and are in force. This is a revision of the currently approved information collection.

Affected Public: State, Local and Tribal Government: Respondent groups identified include (1) State agencies; (2) School Food Authorities; (3) schools.

Estimated Number of Respondents: The total estimated number of respondents is 105,700 (56 State agencies; 17,117 SFAs, and 88,527 schools).

Estimated Number of Responses per Respondent: 313.

Estimated Total Annual Responses: 33,102,536,

Estimated Time per Response: .113 hours.

Number of Reporting Respondents: 105,700.

Number of Responses per Respondent (Reporting): 10.

Total Annual Reporting Responses: 1,058,846.

Reporting Time per Response (Reporting): 0.20 hours.

Total Estimated Annual Reporting Burden: 216,296 hours.

Number of Record Keepers: 105,700.

Number of Records per Record Keeper: 303.

Estimated Total Number of Records/ Responses to Keep: 32,043,690.

Recordkeeping Time per Response: .11 hours.

Total Estimated Annual Recordkeeping Burden: 3,520,380.

Annual Recordkeeping and Reporting Burden: 3,736,676.

Current OMB Inventory for Part 220: 3,857,770.

Difference (change in burden with this renewal): −121,094.

See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number of respondents	Estimated number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden hours
Reporting					
State Agencies	56	36.34	2,035	.28	561
School Food Authorities	17,117	10.02	171,541	1.00	171,472
Schools	88,527	10.00	885,270	.05	44,264
Total Estimated Reporting Burden	105,700	10.02	1,058,846	.20	216,296
Recordkeeping					
State Agencies	56	50	2,800	.18	503
School Food Authorities	17,117	10	171,170	.08	14,207
Schools	88,527	360	31,869,720	.11	3,505,669
Total Estimated Recordkeeping Burden	105,700	303.16	32,043,690	.11	3,520,380
Total of Reporting and Recordkeeping					
Reporting	105,700	10.02	1,058,846	.20	216,296
Recordkeeping	105,700	303.16	32,043,690	.11	3,520,380
Total	105,700	313.17	33,102,536	.11	3,736,676

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2022–04143 Filed 2–24–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Idaho Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as make recommendations on recreation fee proposals for sites on Salmon-Challis, Caribou Targhee, and Sawtooth National Forests within the counties of Butte, Custer, and Lemhi, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/scnf/workingtogether/advisorycommittees.*

DATES: The virtual meeting will be held on Thursday, April 7, 2022, 9:00 a.m.–5:00 p.m., Mountain Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually via telephone and/or video conference. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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.

FOR FURTHER INFORMATION CONTACT: Charles A. Mark, Designated Federal Officer (DFO), by phone at 208–756–5100 or email at *charles.mark@usda.gov* or Amy Baumer at 208–756–5145 or email at *amy.baumer@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals; and

2. Make funding recomendations on Title II projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 31, 2022 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Amy Baumer 1206 S Challis St., Salmon, ID 83467, or by email to *amy.baumer@usda.gov*.

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

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: February 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–04023 Filed 2–24–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will hold two virtual meetings by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Shasta County. RAC information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*.

DATES: The virtual meetings will be held on:

- Wednesday, March 16, 2022, 9:30 a.m.–11:30 a.m., Pacific Daylight Time; and
- Wednesday, March 23, 2022, 9:30 a.m.–11:30 a.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held virtually via Microsoft Teams. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at the Shasta Lake Ranger Station. Please call ahead at 530–275–1587 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to review the following:

1. Comments from the Designated Federal Officer (DFO);
2. Approve minutes from last meeting;
3. Discuss, recommend, approve Title II projects;
4. Public comment period; and
5. Closing comments from the DFO.

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Friday before the scheduled meetings to be scheduled on the agenda for a particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002 or by email to *lejon.hamann@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled for **FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

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: February 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–04025 Filed 2–24–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Gila National Forest is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Gila National Forest, 3005 E Camino del Bosque, Silver City, New Mexico 88061.

FOR FURTHER INFORMATION CONTACT: Matt Schultz, Recreation, Heritage, Engineering, Lands and Minerals Staff, 575–388–8280, or *matthew.schultz@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Head of the Ditch, Wolf Hollow, Quemado Lake—El Caso I–III, Valle Tio Vinces

Public Corrals, Big Horn, Pueblo Park, Cosmic, Forks, Sapillo, Aeroplane Mesa, Apache Creek, Ben Lilly, Willow Creek, Gwynn Tank, South Fork, Cherry Creek, Iron Creek, McMillan, Railroad Canyon, and Upper Gallinas Campgrounds are proposed at $10 per night. A $15 fee is proposed at Mesa Campground dump station. The Cosmic Group Campground is proposed for $100 per night. In addition, this proposal would implement new fees at four recreation rentals: Monument Park Cabin proposed at $50 per night, Negrito Fire Lookout proposed at $50 per night, Willow Creek Cabin proposed at $125 per night, and Kingston Work Center proposed at $150 per night. A new state-wide New Mexico annual pass is being proposed for $40. The full suite of Interagency passes would be honored.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for campgrounds and cabins will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: February 17, 2022.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–04008 Filed 2–24–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Business Trends and Outlook Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 9, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Business Trends and Outlook Survey.

OMB Control Number: 0607–XXXX.

Form Number(s) The electronic survey instrument has no form number.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: We expect 45,000 responses every two weeks for a total of 1,170,000 responses annually.

Average Hours per Response: 8 minutes.

Burden Hours: 156,000.

Needs and Uses: The mission of the U.S. Census Bureau (Census Bureau) is to serve as the leading source of quality data about the nation's people and economy; in order to fulfill this mission, it is necessary to innovate to produce more detailed, more frequent, and more timely data products. The Coronavirus pandemic was an impetus for the creation of new data products by the Census Bureau to measure the pandemic's impact on the economy: The Small Business Pulse Survey (SBPS) (OMB Number: 0607–1014) and the weekly Business Formation Statistics. Policymakers and other federal agency officials, media outlets, and academia commended the Census Bureau's rapid response to their data needs during the largest economic crisis in recent American history. The Census Bureau proposes to capitalize on the successes that underlie the current high frequency data collection and near real time data dissemination that have been engineered for the SBPS. The proposed Business Trends and Outlook Survey (BTOS) will be an ongoing collection that will allow for high frequency, timely, and granular information about current economic conditions and trends as well as the impact of national, subnational, or sector-level shocks on business activity. The proposed BTOS will also allow the Census Bureau a mechanism for providing more detailed data during times of economic or other emergencies. Thus, the Census Bureau is requesting three years of approval from OMB to conduct the BTOS.

The BTOS will increase the scope of the Small Business Pulse Survey to include large employer businesses (those with 500 or more employees), multi-unit businesses (those with establishments in more than one location), and nonemployer businesses (those with no paid employees); it will also include the U.S. Island Areas in addition to Puerto Rico. As with the SBPS, the BTOS will include most non-farm sectors of the U.S. economy. The BTOS will incrementally build on the success of the SBPS and will be implemented using components of the current SBPS platform. The first stage of the BTOS will be an expansion of the SBPS to include the addition of large single unit employer businesses, to be followed by the addition of multi-unit businesses, and then nonemployer businesses. The BTOS will ultimately produce high frequency statistics across most non-farm sectors of the U.S. economy, with estimates by sector, state, state by sector, sub-sector, the largest fifty Metropolitan Statistical Areas (MSA) by population size, employment size, and employer status. As with other Census Bureau data products, detailed methodology and measures of quality will be published for BTOS data products. BTOS products will be based on representative samples drawn from the full universe of businesses, making them unique and the results reliable when compared to other high frequency business survey data such as those produced in the private sector.

The Census Bureau proposes an incremental path to the proposed final scope of the BTOS in order to learn at each implemented stage and to allow for modifications based on lessons learned or internal/external stakeholder feedback in prior iterations. The Census Bureau will submit a request to OMB including 30 days of public comment announced in the **Federal Register** to receive approval to make any substantive revisions to the content or methods of the proposed survey, including the incremental scope changes discussed above.

The Census Bureau published a notice in the **Federal Register** on November 9, 2021 soliciting public comments on our plans to conduct the BTOS. That notice referred to the survey as the Business Pulse Survey. The name of the survey has since been changed to Business Trends and Outlook Survey with the acronym BTOS. That earlier notice also included an estimate of 6 minutes to complete the survey. We have since revised that estimate to 8 minutes.

The BTOS will be a new survey with bi-weekly data collection and publication; estimates produced from the BTOS will initially be released as experimental data products. The SBPS demonstrated the ability of the Census Bureau to collect and publish high frequency, timely data during a national economic emergency. The BTOS will capitalize on this success and provide regularly occurring high frequency data products and measures of quality based on national and subnational

representative samples using transparent methodology. The BTOS will produce data continuously, in part as a response to feedback on the SBPS that longer time series would have been useful to contextualize the pandemic impact. Continuous data will allow for the measurement of economic trends during all phases of the business cycle as well as during times of economic and other emergencies. The BTOS will uniquely provide the ability to produce these data and associated measures of quality.

The BTOS data series will provide insight on the state of the economy, prior to and during an event (including but not limited to natural disasters or economic crises) and will assist in monitoring the recovery from the event. It will also be useful in understanding aggregate and subaggregate changes in economic trends throughout the business cycle. BTOS data may be used by elected officials, government program officials, policy makers, industry leaders, economic and social analysts, business entrepreneurs, business and economic news organizations, and domestic and foreign researchers in academia, business, and government.

The BTOS will allow for a large number of data products that are complementary to the Census Bureau's existing monthly and quarterly economic indicator programs which provide estimates of contemporaneous economic activity at the national sector level. The BTOS will produce complementary disaggregate contemporaneous data as well as data that reflect the outlook of businesses. The BTOS will be complementary to the Census Bureau's existing annual programs, serving as a platform through which trends and data gaps may first be identified for subsequent inclusion in annual programs.

The BTOS instrument will include core and supplemental content. Core content will form the basis of the instrument and run continuously; core content will include measures of economic activity that are applicable across all non-farm sectors and are important across the business cycle and during economic or other emergencies. Supplemental content will be included on the instrument with a regular periodicity and will be designed to provide urgently needed data on an emerging or current issue.

Core concepts for the BTOS will be selected based on research and analysis conducted during the SBPS, stakeholder feedback, and the ability to collect complementary items on monthly, quarterly, annual, or census programs to provide context and benchmarking.

Initially, all data products will be accessible through the Census Bureau's Experimental Data Products site. Experimental data products are clearly identified and include methodology and supporting research with their release.

Affected Public: Business or other for-profit organizations.

Frequency: Bi-weekly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–04060 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–05–2022]

Foreign-Trade Zone (FTZ) 99—Wilmington, Delaware, Notification of Proposed Production Activity AstraZeneca Pharmaceuticals, LP (Pharmaceutical Products), Newark, Delaware

AstraZeneca Pharmaceuticals, LP submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Newark, Delaware within Subzone 99D. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on February 16, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status materials and specific finished products described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished products and materials would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include: BRILINTA (ticagrelor) tablets; LYNPARZA (olaparib) tablets; SEROQUEL IR (quetiapine fumarate) tablets; and, SEROQUEL XR (quetiapine fumarate) tablets (duty-free).

The proposed foreign-status materials include: Anastrozole active pharmaceutical ingredient (API); olaparib API; quetiapine fumarate API; and, ticagrelor API (duty rates 6.5%). The request indicates that olaparib API and ticagrelor API are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 6, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: February 18, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–03953 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on March 16, 2022, at 11:30 a.m., Eastern Standard Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than March 9, 2022.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 14, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–03971 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee will meet March 15, 2022, at 10:00 a.m., Eastern Standard Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Regulations Update
5. Working Group Reports
6. Automated Export System Update

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than March 8, 2022.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 14, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–03970 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Notice of Initiation and Preliminary Results of Countervailing Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to determine whether Özdemir Boru Profil Sanayi ve Ticaret Anonim Sirketi (Ozdemir A.S.) is the successor-in-interest to Özdemir Boru Profil Sanayi ve Ticaret Limited Sirketi (Ozdemir LLC) in the context of the countervailing duty (CVD) order on heavy walled rectangular pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). We also preliminarily determine that Ozdemir A.S. is the successor-in-interest to Ozdemir LLC. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 25, 2022.

FOR FURTHER INFORMATION CONTACT: Jaron Moore, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2016, Commerce published the CVD order on HWR pipes and tubes from Turkey.[1] On November 2, 2021, Ozdemir A.S. requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR of the *Order* to confirm that Ozdemir A.S. is the successor-in-interest to Ozdemir LLC and, accordingly, to assign it the cash deposit rate of its predecessor.[2] In its request, Ozdemir A.S. stated that it undertook a legal name change from Özdemir Boru Profil Sanayi ve Ticaret Limited Sirketi, but the company is

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 62874 (September 13, 2016) (*Order*).

[2] *See* Ozdemir A.S.'s Letter, ''Request for Changed Circumstances Reviews,'' dated November 2, 2021 (CCR Request).

otherwise unchanged with regard to the relevant factors to be examined.[3] No interested parties filed comments opposing the CCR Request.

On November 18, 2021, we issued a letter to Ozdemir A.S. requesting additional information and documentation regarding changes in the company's ownership, productive facilities, and corporate, legal and financial structures, as well the level of government involvement, during the relevant period.[4] Ozdemir A.S. refiled its CCR Request on November 24, 2021, with the requisite information.[5] On January 6, 2022, we extended the deadline to initiate a CCR until February 22, 2022.[6] On January 21, 2022, we issued a supplemental questionnaire to Ozdemir A.S., requesting additional information with regard to government involvement in the company's operations,[7] to which it provided a timely response on January 28, 2022.[8]

Scope of the Order

The products covered by the *Order* are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Initiation and Preliminary Results of CCR

Pursuant to section 751(b) of the Act, and 19 CFR 351.216, Commerce will conduct a CCR upon receipt of information concerning, or a request from an interested party for a review of a CVD order, which shows changed circumstances sufficient to warrant a review of the order.[9] Commerce finds that the information submitted by Ozdemir A.S. demonstrates changed circumstances sufficient to warrant such a review.[10] Therefore, in accordance with 751(b)(1)(A) of the Act and 19 CFR 351.216(d), we are initiating a CCR based on the information contained in Ozdemir A.S's filings to determine whether Ozdemir A.S. is the successor-in-interest to Ozdemir LLC.

Further, 19 CFR 351.221(c)(3)(ii) permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results of a CCR in a single notice if Commerce concludes that expedited action is warranted. In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[11]

In a CVD CCR, Commerce will make an affirmative successorship finding (*i.e.,* that the respondent company is the same subsidized entity for CVD cash deposit purposes as the predecessor company) where there is no evidence of significant changes in the respondent's: (1) Operations; (2) ownership; and (3) corporate and legal structure during the relevant period (*i.e.,* the ''look-back window'') that could have affected the nature and extent of the respondent's subsidy levels.[12] Where Commerce makes an affirmative CVD successorship finding, the successor's merchandise will be entitled to enter under the predecessor's cash deposit rate.[13]

Here, there is no evidence of significant changes between Ozdemir LLC and the successor-in-interest company Ozdemir A.S.'s operations, ownership, or corporate or legal structure during the relevant period that could have impacted the successor-in-interest company's subsidy levels.[14] Record evidence, as submitted by Ozdemir A.S., indicates that Ozdemir A.S. operates as essentially the same business entity as Ozdemir LLC with respect to the subject merchandise.[15] Specifically, all record information with respect to trading operations,[16] shareholders,[17] and corporate and legal structure [18] demonstrates that Ozdemir A.S. is the same subsidized entity as its predecessor.[19] Accordingly, we preliminarily determine that Ozdemir A.S. is the successor-in-interest to Ozdemir LLC, and as such, that Ozdemir A.S. is entitled to Ozdemir LLC's CVD cash deposit rate with respect to entries of subject merchandise.

Commerce will issue its final results of the review in accordance with the

[3] *Id.*

[4] *See* Commerce's Letter, ''Request for Changed Circumstances Reviews for Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey Orders,'' dated November 18, 2021 (therein requesting additional information from Ozdemir A.S.).

[5] *See* Ozdemir A.S.'s Letter, ''Request for Changed Circumstances Reviews,'' dated November 24, 2021 (CCR Request Supplemental). Ozdemir A.S. also requested that Commerce conduct an expedited initiation and preliminary results of CCR, pursuant to 19 CFR 351.221(c)(3)(ii).

[6] *See* Commerce's Letter, ''Extension of Initiation Deadline,'' dated January 6, 2022.

[7] *See* Commerce's Letter, ''Supplemental Questionnaire,'' dated January 21, 2022.

[8] *See* Ozdemir A.S.'s Letter, ''Supplemental Questionnaire,'' dated January 28, 2022 (Jan 28 Response).

[9] *See* 19 CFR 351.216(d).

[10] *See* CCR Request; CCR Request Supplemental; and Jan 28 Response; *see also Cast-Iron Soil Pipe Fittings from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Reviews,* 84 FR 64263 (November 21, 2019).

[11] *See* 19 CFR 351.221(c)(3)(ii); *see also, e.g., Notice of Initiation and Preliminary Results of Changed Circumstances Reviews: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 85 FR 5193 (January 29, 2020), unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020) (*Passenger Vehicle and Light Truck Tires from China CCR*).

[12] *See Certain Pasta from Turkey: Preliminary Results of Countervailing Duty Changed Circumstances Review,* 74 FR 47225, 47227 (September 15, 2009). In this case, the relevant period, or ''look-back window,'' is December 31, 2020 (end of the period of review associated with the most recent opportunity to request an administrative review), through November 2, 2021 (date of the original CCR request).

[13] *See Passenger Vehicle and Light Truck Tires from China CCR.*

[14] *See* CCR Request; CCR Request Supplemental; and Jan 28 Response; *see also Passenger Vehicle and Light Truck Tires from China CCR,* 85 FR at 5195.

[15] *See* CCR Request; CCR Request Supplemental; and Jan 28 Response.

[16] *See* CCR Request at 5 and Exhibits 8–9 and CCR Request Supplemental at 6 and Exhibits 8–9, which demonstrates that Ozdemir A.S.'s trading operations are the same as those of Ozdemir LLC.

[17] *See* CCR Request at 3–4 and Exhibits 3 and CCR Request Supplemental at 3–4 and Exhibits 2–5, which demonstrates that Ozdemir A.S.'s shareholders are the same as those of Ozdemir LLC.

[18] *See* CCR Request at 3–5 and Exhibits 3, 6–7 and CCR Request Supplemental at 3 and Exhibits 3–5, which demonstrates that Ozdemir A.S.'s corporate and legal structure is the same as that of Ozdemir LLC.

[19] *See* CCR Request; CCR Request Supplemental; and Jan 28 Response.

time limits set forth in 19 CFR 351.216(e). Should the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by Ozdemir A.S. the CVD cash deposit rate applicable to Ozdemir LLC, effective the date of publication of the final results.

Public Comment

Pursuant to 19 CFR 351.310(c), an interested party may request a hearing within 14 days of publication of this notice.[20] In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[21] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d).[22] Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.[23] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov,* and must also be served on interested parties. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[24] Note that Commerce has temporarily modified certain requirements for serving documents containing business proprietary information, until further notice.[25]

Final Results of the Changed Circumstances Review

Consistent with 19 CFR 351.216(e), Commerce will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results, if all parties agree to the preliminary finding.

[20] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing to 14 days.

[21] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs to 14 days.

[22] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[23] *See* 19 CFR 351.309(c)(2); 19 CFR 351.309(d)(2).

[24] *See* 19 CFR 351.303(b).

[25] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b) and 351.221(c)(3)(ii).

Dated: February 17, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–03986 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB827]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, March 16, 2022, at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3136825731205621261.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will discuss specifications and measures anticipated to be included in Framework Adjustment 65/Specifications and Management Measures which is expected to be initiated at the April 2022 Council meeting. They will discuss a progress report and a Council motion to consider adding to the 2022 Council Priorities, a transition plan for Atlantic cod management from the current two management units to up to five management units. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 22, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–04038 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB828]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Survey Working Group via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, March 16, 2022 at 9 a.m. Webinar registration URL information *https://attendee.gototraining.com/r/5948242878676683522.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Survey Working Group (SSWG) will meet to review progress updates to address the Terms of Reference (TORs): Methods and analyses identified to address TORs, including timelines for completion, and SSWG sub-groups activities. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: February 22, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–04036 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB834]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Tuesday, March 15, 2022, starting at 9:30 a.m. and continue through 2:30 p.m. on Wednesday, March 16, 2022. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will review and possibly modify the 2022 acceptable biological catch (ABC) recommendations for *Illex* squid based on updated analysis and work products developed as part of an ongoing Council contract to evaluate recent changes to the fishery and stock dynamics. The SSC will also provide 2023–24 Atlantic Mackerel rebuilding ABC recommendations for different Council rebuilding alternatives and previous SSC guidance on stock projections. The SSC will also review the most recent survey and fishery data and the previously recommended 2023 ABC for Golden and Blueline Tilefish. The SSC will also review and provide feedback on the most recent Mid-Atlantic State of the Ecosystem report, other Ecosystem Approach to Fisheries Management (EAFM) related activities, and the work plan of the SSC's Ecosystem Work Group. The SSC will discuss and develop a plan to address the Council's motion for SSC input regarding the Council's Recreational Harvest Control Rule management action. In addition, the SSC will receive an update on the activities and future products of the Economic Work Group. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: February 22, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–04037 Filed 2–24–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* March 27, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/22/20201, 11/26/2021, and 12/17/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7025–00–NIB–0023—Monitor, Portable, Black, 15″–17″ Laptops
Designated Source of Supply: Association for the Blind and Visually Impaired—Goodwill, Rochester, NY
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
Distribution: A-List
Mandatory for: Total Government Requirement

NSN(s)—Product Name(s):
680000100S—Odor H2S Remover, Cleaner and Post Conditioner, KCD–X Lift Station & Sewer, 25 lb.
680000200S—Toxic Gases & Vapors (VOCs) Remover, KCD–X HAZMAT Handling, Response & Recovery, 25 lb.
680000300S—Wastewater Treatment, SETTApHY Flocculant, 25 lb.
680000000S—Treatment, KCD Wastewater Lift Station & Collections System (Sewer), 25 lb.
680000400S—Treatment, GasKat Odor & Toxic Gases Remover, 24 oz.
Designated Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Distribution: B-List
Mandatory for: Broad Government Requirement

Service(s)

Service Type: Custodial Service
Mandatory for: USDA Forest Service, Pacific Northwest Juneau Forestry Sciences Lab, Juneau, AK
Designated Source of Supply: REACH, Inc., Juneau, AK
Contracting Activity: FOREST SERVICE, USDA–FS, CSA NORTHWEST 4

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–04046 Filed 2–24–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* March 27, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):
MR 10795—Party Popper Cake Topper, Includes Shipper 20795
MR 11508—Cat Teaser
MR 13501—Wing Corkscrew
MR 13502—Double Waiters Corkscrew
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
Distribution: C-List
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4

Service(s)

Service Type: Custodial and Refuse Removal Services
Mandatory for: Bureau of Land Management, Las Cruces District Office, Upham and I–25 Parking Sites, Las Cruces, NM
Designated Source of Supply: Tresco, Inc., Las Cruces, NM
Contracting Activity: BUREAU OF LAND MANAGEMENT, BLM ALBUQUERQUE DISTRICT OFFICE

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Custodial and Grounds Maintenance Services
Mandatory for: Internal Revenue Service, Fresno Service Center, Fresno, CA, 5045 E. Butler Avenue, Fresno, CA
Designated Source of Supply: Goodwill Service Connection, Inc., Stockton, CA
Contracting Activity: INTERNAL REVENUE SERVICE, WESTERN REGION

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–04048 Filed 2–24–22; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0012]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Mortgage Acts and Practices—Advertising (Regulation N).''

DATES: Written comments are encouraged and must be received on or before April 26, 2022 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–2022–0012 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. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. 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: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, 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: Mortgage Acts and Practices—Advertising (Regulation N).

OMB Control Number: 3170–0009.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 483.

Estimated Total Annual Burden Hours: 242.

Abstract: Regulation N (12 CFR part 1014) prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four (24) months from last dissemination. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–03977 Filed 2–24–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0025; OMB Control Number 0704–0321]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Contract Financing

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

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB, for clearance, the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: DoD will consider all comments received by March 28, 2022.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions; OMB Control Number 0704–0321.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 149.

Responses per Respondent: Approximately 20.

Annual Responses: 2,928.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 4,392.

Frequency: On occasion.

Needs and Uses: Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military equipment for foreign governments. To comply with this requirement, the Government needs to know how much of each progress payment to charge each country. DFARS 232.502–4–70(a) prescribes use of the clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains foreign military sales (FMS) requirements. The clause at 252.232–7002 requires each contractor whose contract includes FMS requirements to submit a separate progress payment request for each progress payment rate and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–03942 Filed 2–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0026]

Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2022–23 Through 2024–25

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before April 26, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0026. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Integrated Postsecondary Education Data System (IPEDS) 2022–23 through 2024–25.

OMB Control Number: 1850–0582.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 62,970.

Total Estimated Number of Annual Burden Hours: 760,351.

Abstract: The National Center for Education Statistics (NCES) seeks authorization from OMB to make a change to the Integrated Postsecondary Education Data System (IPEDS) data collection. Current authorization expires August 31, 2022 (OMB# 1850–0582 v.24–29). NCES is requesting a new clearance for the 2022–23, 2023–24, and 2024–25 data collections to enable us to make changes to the IPEDS data collection components, clarify definitions and instructions throughout the components, and to continue the IPEDS collection of postsecondary data over the next three years. IPEDS is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables NCES to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, student outcomes, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01. In 2020–21, IPEDS collected data from 6,063 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 [Pub. L. 102–325]). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis; approximately 300 non-title IV institutions elect to respond each year. Institution closures and mergers have led to a decrease in the number of institutions in the IPEDS universe over the past few years. Due to these fluctuations, combined with the addition of new institutions, NCES uses rounded estimates for the number of institutions in the respondent burden calculations for the upcoming years (estimated 6,100 Title IV institutions plus 300 non-title IV institutions for a total of 6,400 institutions estimated to submit IPEDS data during the 2022–23 through 2024–25 IPEDS data collections). IPEDS data are available to the public through the College Navigator and IPEDS Data Center websites. This clearance package includes a number of proposed changes to the data collection. As part of the public comment period review, NCES requests that IPEDS data submitters and other stakeholders respond to the directed questions found in Appendix D of this submission.

Dated: February 22, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–04043 Filed 2–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0025]

Agency Information Collection Activities; Comment Request; Carl D. Perkins Career and Technical Education Act State Plan

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 26, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0025. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the

information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Corinne Sauri, (202) 245–6412.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Carl D. Perkins Career and Technical Education Act State Plan.

OMB Control Number: 1830–0029.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 972.

Abstract: This information collection solicits from all eligible States and outlying areas the State plans required under Title I of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century (Perkins V.).

This request is to revise the information collection to gather State Plans and annual revision under Perkins V.

Dated: February 22, 2022.

Kate 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. 2022–04033 Filed 2–24–22; 8:45 am]

BILLING CODE 4000–01–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: RP22–564–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: AVC Storage Loss Retainage Factor Update—2022 to be effective 4/1/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5052.
Comment Date: 5 p.m. ET 3/2/22.

Docket Numbers: RP22–565–000.
Applicants: Rover Pipeline LLC.
Description: Compliance filing: Flow Through of Cash-Out Penalty Revenues filed on 2–18–22 to be effective N/A.
Filed Date: 2/18/22.
Accession Number: 20220218–5058.
Comment Date: 5 p.m. ET 3/2/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–566–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: Empire Fuel Tracker Per GT&C 23.3 to be effective 4/1/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5077.
Comment Date: 5 p.m. ET 3/2/22.

Docket Numbers: RP22–567–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: Fuel Tracker Filing (GTC 41) 2022 to be effective 4/1/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5094.
Comment Date: 5 p.m. ET 3/2/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04049 Filed 2–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–77–002.
Applicants: BlackRock, Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of BlackRock, Inc.
Filed Date: 2/18/22.
Accession Number: 20220218–5095.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: EC19–57–001.
Applicants: The Vanguard Group, Inc., Vanguard Global Advisors, LLC, Vanguard Asset Management, Ltd., Vanguard Investments Australia Ltd., Vanguard Fiduciary Trust Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of The Vanguard Group, Inc., et al.
Filed Date: 2/16/22.
Accession Number: 20220216–5229.
Comment Date: 5 p.m. ET 3/9/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL19–58–011.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing Docket Nos. EL19–58, ER19–1486 to be effective 11/12/2020.
Filed Date: 2/18/22.
Accession Number: 20220218–5124.
Comment Date: 5 p.m. ET 3/10/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3125–015.
Applicants: AL Sandersville, LLC.
Description: Supplement to August 20, 2021 Notice of Non-Material Change in Status of AL Sandersville, LLC.
Filed Date: 2/18/22.
Accession Number: 20220218–5156.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER19–105–007.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing to Commission's 1/20/22 Order in ER19–105 to be effective 2/19/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5032.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER20–1087–002.
Applicants: New England Electric Transmission Corporation.
Description: Compliance filing: 2nd Amended Order No. 864 Compliance Filing of New England Electric Transmission to be effective 1/27/2020.
Filed Date: 2/18/22.
Accession Number: 20220218–5125.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER20–1088–002.
Applicants: New England Hydro Transmission Electric Company.
Description: Compliance filing: 2nd Amended Order No. 864 Compliance Filing—NEHTEC Massachusetts Phase II Agmt to be effective 1/27/2020.
Filed Date: 2/18/22.
Accession Number: 20220218–5135.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER20–1089–002.
Applicants: New England Hydro Transmission Corporation.
Description: Compliance filing: 2nd Amended Order No. 864 Compliance Filing—NEHTC New Hampshire Phase II Agmt to be effective 1/27/2020.
Filed Date: 2/18/22.
Accession Number: 20220218–5138.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER21–1694–002.
Applicants: ISO New England Inc., Green Mountain Power Corporation.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: GMP; Compliance Filing to Revise Effective Date for Order No. 864 to be effective 1/27/2020.
Filed Date: 2/18/22.
Accession Number: 20220218–5184.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1076–000.
Applicants: Hawtree Creek Farm Solar, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 2/19/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5030.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1077–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii) 2022–02–18_SA 3785 ATC–WPL–West Sharon PCA to be effective 4/20/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5055.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1078–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: § 205(d) Rate Filing: 2021 RIA Annual Update and Amend to be effective 1/1/2021.
Filed Date: 2/18/22.
Accession Number: 20220218–5065.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1079–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: CCSF Sunol Golf Course Additional Project Filing (SA 275) to be effective 4/20/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5075.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1080–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Victorville SCLA Portland IFA DSA SA No 1173 1174 WDT1662 to be effective 2/19/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5109.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1081–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA, Sch. 12 and RAA, Sch. 17 re: Quarterly Member Lists Update to be effective 12/30/2021.
Filed Date: 2/18/22.
Accession Number: 20220218–5118.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1082–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Commonwealth Edison Company submits tariff filing per 35.13(a)(2)(iii) ComEd submits Amendment to Attachment H–13A to be effective 4/20/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5123.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1083–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA No. 3483, Queue No. AA2–069—Garrison (amend) to be effective 4/2/2018.
Filed Date: 2/18/22.
Accession Number: 20220218–5131.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1084–000.
Applicants: Deuel Harvest Wind Energy LLC.
Description: § 205(d) Rate Filing: Deuel Harvest Wind MBR Tariff Amendment to be effective 4/19/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5152.
Comment Date: 5 p.m. ET 3/11/22.

Docket Numbers: ER22–1085–000.
Applicants: Panorama Wind, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 2/19/2022.
Filed Date: 2/18/22.
Accession Number: 20220218–5183.
Comment Date: 5 p.m. ET 3/11/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04047 Filed 2–24–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0849; FRL–9311–01–OCSPP]

Revocation of 1980 Guidelines and Final Opportunity To Submit a Request To Correct the Initial Report Filed for the Original Toxic Substances Control Act (TSCA) Inventory of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is revoking the 1980 guidelines and associated procedures for correcting the specific chemical identities of incorrectly described chemical substances submitted to EPA in 1978 using the original reporting form for inclusion on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory (Inventory). In so doing, the Agency is providing a final opportunity to use the 1980 guidelines and form to request corrections of Inventory listings to address errors with the chemical identities submitted in the original reporting forms. The regulated community will have 60 days from the date of this notice to submit any final Inventory corrections. EPA is also announcing the discontinuation of the related form and associated approval of the collection activities under the Paperwork Reduction Act (PRA).

DATES: The revocation is effective May 31, 2022. All final Inventory corrections must be received on or before April 26, 2022.

ADDRESSES: Final corrections must be submitted by mail to the Office of Pollution Prevention and Toxics Confidential Business Information Center (7407M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001 or by courier to the Office of Pollution Prevention and Toxics Confidential Business Information Center, Environmental Protection Agency, 1201 Constitution Avenue NW, WJC East; Room 6428, Washington, DC 20004–3302; (202) 564–8930. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0894, is available online at *http://www.regulations.gov.* Please note that due to the public health concerns related to COVID–19, the EPA/Docket Center and Reading Room is open to visitors by appointment only. For the latest status information on the EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Alexandria Stanton, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5574; email address: *stanton.alexandria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you are a manufacturer or importer of a chemical substance who incorrectly reported to the original TSCA Inventory published in 1979, or its revision published in 1980, via an original Inventory reporting form, and added to the Inventory with an incorrect specific chemical identity. The following North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provide a guide to help readers determine whether this action may apply to them:

- Chemical manufacturing or processing (NAICS code 325).
- Petroleum and Coal Products Manufacturing (NAICS code 324).

If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA will be discontinuing processing Inventory Corrections, withdrawing its Inventory Correction guidelines published in the **Federal Register** of July 29, 1980 (45 FR 50544), and phasing out the accompanying procedures by which a person who submitted an incorrectly identified chemical substance on an original Inventory reporting form, or a legal successor, may request a correction of that Inventory listing. The phase-out period for correction requests ends on April 26, 2022.

During the phase-out period persons may wish to review their original Inventory submissions for any remaining incorrectly described chemical substances and submit correction requests. Correction requests must be complete and meet the correction guidelines published in 1980. Correction requests that are incomplete or that are ineligible according to the 1980 guidelines will be rejected by EPA. Correction requests that are complete and eligible will be accepted by the Agency, and the corrected specific chemical identities will be added to the Inventory. Any outstanding correction requests already received by EPA at the time of publication of this notice for which the Agency has requested but not yet received additional information in order to be able to process the request will have until April 26, 2022 to provide the information and complete the request.

After April 26, 2022, EPA does not intend to accept requests to correct original Inventory reporting forms. If, after April 26, 2022, a person discovers for any reason an error in the specific chemical identity of a chemical substance submitted on an original Inventory reporting form, a Premanufacture Notice (PMN) or exemption notice may need to be filed if the chemical substance is not already listed on the TSCA Inventory.

This action does not impact EPA's authority for initiating, at its discretion, corrections to the Inventory should the Agency determine on its own that, for example, a chemical substance listed on the Inventory has been unintentionally misidentified. Only in this situation will EPA, at its discretion, request and accept documentation from a company to support an Inventory correction in lieu of requiring a PMN or exemption notice. This action also does not impact EPA's regular maintenance of the Inventory that can include nomenclature updates and correcting minor errors to listings. EPA notes that the Inventory corrections 1980 guidelines and associated phase-out period do not apply to requests for corrections to PMN submissions. If a PMN submitter becomes aware of a material error in a PMN submission currently under review by EPA, the submitter must timely inform EPA pursuant to 40 CFR 720.40(f). EPA will not grant requests to correct a specific chemical identity reported in a PMN submission after the applicable review period has ended.

C. What is the Agency's authority for taking this action?

TSCA section 5 requires any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose to notify EPA at least 90 days in advance. TSCA section 8(b) requires EPA to compile, keep current, and publish a list (*i.e.,* the TSCA Inventory) of each chemical substance that is manufactured or processed in the United States.

D. Why is EPA taking this action?

It has become increasingly evident that the 1980 guidelines have outlived the purpose for which they were intended. Furthermore, the Agency

understands that the passage of time is also making it more difficult for the original submitters or their legal successors to provide the necessary documentation supporting a request for a correction. Persons have had more than 40 years since the 1980 publication of the revised Inventory and the correction guidelines to discover inadvertent, good faith errors on original Inventory reporting forms.

E. What is the incremental economic impact of this action?

The EPA considered the incremental costs and benefits associated with this action, and the EPA estimates there will be a burden reduction for both respondents and the Agency with the elimination of reporting and recordkeeping requirements associated with submission, form completion, recordkeeping, and CBI substantiation. The EPA estimates a burden reduction for respondents of $3,030 (2016 wage rates) based on the currently approved Information Collection Request (ICR) OMB Control No. 2070–0145 (EPA ICR No. 1741.08). This action will also reduce Agency costs of $3,574 (2016 wage rates) associated with this collection, which include the printing and distributing of reporting forms, providing reporting assistance, reviewing, and processing of the report forms and entry of data into the Inventory databases.

II. Background

A. What is the original Inventory reporting requirement?

In accordance with the TSCA section 8(b) requirement, EPA promulgated the Inventory Reporting Regulations at 40 CFR part 710 on December 23, 1977 (42 FR 64572; FRL 817–1), which governed the reporting requirements for, and the scope of, the chemical substances to be included on the original TSCA Inventory. The reporting requirements included a 1975 to 1978 reporting period for chemical substances in U.S. commerce at that time and a 1978 submission period to report such chemicals on one of five original Inventory reporting forms.

B. What are the 1980 guidelines for correcting errors in original reports?

Following the 1978 TSCA Inventory submission period, EPA recognized that a considerable number of chemical substances submitted for inclusion on the original Inventory, published in 1979, and its revision published in 1980, could unintentionally have been described incorrectly by persons reporting them. These errors could have happened as a result of typographical or transcriptional errors, the inadvertent (good faith) technical misidentification of chemical substances, or the lack of sufficient technical or analytical capabilities to fully characterize the exact chemical identities of some chemical substances.

Although not required to do so under TSCA, EPA decided to provide a mechanism for submitters to request corrections of specific chemical identity errors found on their original Inventory reporting forms. In the **Federal Register** of July 29, 1980 (45 FR 50544; FRL–1554–3), the Agency announced the availability of the revised TSCA Inventory and 1980 guidelines on how to request corrections of incorrectly described chemical substances. The 1980 guidelines identify the types of correction requests that were eligible to be submitted and the documentation that should accompany each type of request. The 1980 guidelines apply to incorrectly described chemical substances submitted on original Inventory reporting forms and included on the original 1979 Inventory and its 1980 revision.

The 1980 guidelines provided industry with a relatively easy mechanism to correct unintentional chemical identity errors made on original Inventory reporting forms without having to interrupt manufacture and submit a PMN or exemption notice under TSCA section 5. As a result, the 1980 guidelines were widely used to request corrections to original Inventory listings, with requests decreasing over time. EPA accepted a large number of correction requests, particularly at first, and added the correct specific chemical identities to the Inventory, which to a certain extent has helped the Agency to maintain an accurate Inventory of existing chemicals. However, the 1980 guidelines failed to include a time period during which requests for corrections to the Inventory could be submitted. It was never EPA's intent to establish a correction mechanism that would be open-ended in time, lasting for decades.

III. Rationale

It has become increasingly evident that the 1980 guidelines have outlived the purpose for which they were intended. Furthermore, the Agency understands that the passage of time is also making it more difficult for the original submitters or their legal successors to provide the necessary documentation supporting a request for a correction. Original submitters of original Inventory reporting forms or their legal successors often are unable to provide the supporting documentation to substantiate their assertion that the chemical identity was incorrect on the original reporting form, which is necessary for EPA to accept that a correction is appropriate. The lack of adequate original submitter documentation has been a major concern and obstacle for EPA in reviewing and accepting correction requests. In order for EPA to accept a correction request, the requester must provide certain original company records documenting what was known about the specific chemical identity of the chemical substance during the 1975 to 1978 original Inventory reporting period, as well as the specific nature of the errors contained in the original Inventory reporting form.

The Agency also understands that the Inventory correction request process may be used improperly by entities attempting to avoid submission of a PMN or exemption notice for a new chemical substance. An example of such an improper use would be a request to change the specific chemical identity of a chemical substance correctly submitted on an original Inventory reporting form, and correctly listed on the original Inventory or its revision, in order to include on the current Inventory a different specific chemical identity that was the result of a change in the manufacture of the original chemical substance. The manufacturing change may be due to a change in the supply of a feedstock, a change in a performance requirement of the end product, or a change in the commercial intentions of the end product. In these situations where the original chemical substance was correctly submitted on an original Inventory reporting form, but at a later point in time a new and different chemical substance was being manufactured or imported in its place, some persons have requested Inventory corrections that are ineligible under the 1980 guidelines. These situations require the submission of a PMN or exemption notice for the new chemical substances not previously reported.

Persons have had more than 40 years since the 1980 publication of the revised Inventory and the correction guidelines to discover inadvertent, good faith errors on original Inventory reporting forms. In addition, persons have had nine specific opportunities over more than thirty years to review their Inventory listings during the six Inventory Update Rule submission periods in 1986, 1990, 1994, 1998, 2002, and 2006, followed by the three Chemical Data Reporting rule submission periods in 2012, 2016, and 2020. Additionally, the Notice of

Activity reporting in 2017 through 2018 provided an opportunity for comprehensive Inventory listing review. Persons have had more than sufficient time and opportunity to review their Inventory listings and request Inventory corrections for eligible situations. Moreover, the Agency currently receives few requests, many of which are rejected or otherwise cannot be processed for the reasons described above. The Agency therefore believes that continuing to allow Inventory corrections will not improve the accuracy of the Inventory. As a result, EPA is taking this action to end company-requested Inventory corrections.

IV. Paperwork Reduction Act

According to the PRA, 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 that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

This document does not contain any new information collection requirements that would require additional OMB review and approval. The information collection activities related to the potential submission of information pursuant to TSCA section 5 already has been approved by OMB under OMB Control No. 2070–0145 (EPA ICR No. 1741.08). The annual respondent burden for this information collection activity is estimated to average 39 hours per respondent, including time for reading the regulations, processing, compiling and reviewing data, storing, filing, and maintaining the data. For additional details, please see the Information Collection Request document that is available in the docket.

Send any comments about the accuracy of the burden estimate, and any suggested methods for further minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any inventory corrections or related questions to this address.

Authority: 15 U.S.C. 2604.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–04044 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0287; FRL–9612–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Certification of Pesticide Applicators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Certification of Pesticide Applicators (EPA ICR No. 2499.03, OMB Control No. 2070–0196) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. The is a proposed extension of the ICR, which is currently approved through February 28, 2022. Public comments were previously requested via the **Federal Register** on June 30, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments must be received on or before March 28, 2022.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OPP–2021–0287, online using *www.regulations.gov* (our preferred method), by email to *siu.carolyn@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the 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.

Submit written comments and recommendations to OMB for the proposed information collection 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: Carolyn Siu, Regulatory Support Branch, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (Mailcode: 7101M), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1205; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA administers certification programs for pesticide applicators under section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* FIFRA allows EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. The regulations in 40 CFR part 171 include procedures for certification programs for States, Federal agencies, Indian tribes, or U.S. territories who wish to develop and implement their own certification plans and programs, after obtaining EPA approval. This ICR addresses the information collection activities contained in the final rule revisions to 40 CFR part 171, issued in the **Federal Register** on January 4, 2017 (82 FR 952) (FRL–9956–70). The ICR estimates the incremental burden of the changes that were not already included in the ICR entitled ''Certification of Pesticide Applicators'' as approved under OMB No: 2070–0029.

The final rule revised 40 CFR part 171 to include new and revised standards for certification for commercial and private applicators, provisions for recertification of applicators, and training for noncertified applicators applying restricted use pesticides (RUPs) under the supervision of certified applicators. The rule also includes changes to improve the clarity

and organization of 40 CFR part 171 and overall program operation. The changes are intended to ensure that all persons who use RUPs—*i.e.,* private applicators, commercial applicators, and noncertified applicators using RUPs under the direct supervision of certified applicators—are competent to use RUPs in a manner that will not result in unreasonable adverse effects to themselves, others, or the environment.

This ICR estimates the burden and costs of the rule-related information collection activities, including burden and cost estimates related to initial rule familiarization activities.

Form Numbers: None.

Respondents/affected entities: Agricultural establishments, pest control officials, pesticide registrants, pesticide dealers, and administrators of environmental protection programs, governmental pest control programs, pesticide applicator certification programs (*e.g.,* authorized agencies), and RUP dealers (only for EPA administrated programs).

Respondent's obligation to respond: Mandatory, FIFRA sections 3 and 11.

Estimated number of respondents: 1,860,974 (total).

Frequency of response: On occasion.

Total estimated burden: 2,280,849 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $108,061,898 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in the estimates: Apart from updating the format of the ICR to meet current format standards and a few minor changes, there are no substantive changes from the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–03989 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–005]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed February 14, 2022 10 a.m. EST Through February 18, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220018, Final, CHSRA, CA, California High-Speed Rail: San Jose to Merced Project Section Final Environmental Impact Report/Environmental Impact Statement, Review Period Ends: 03/28/2022, Contact: Scott Rothenberg 916–403–6936.

EIS No. 20220019, Final, DOD, ID, Construction and Demonstration of a Prototype Mobile Microreactor, Review Period Ends: 03/28/2022, Contact: Jeff Waksman 703–812–1980.

EIS No. 20220020, Final, USFS, CA, Social and Ecological Resilience Across the Landscape (SERAL), Review Period Ends: 03/28/2022, Contact: Kathryn Wilkinson 209–288–6321.

Dated: February 18, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–03999 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0218; FRL–9593–01–OCSPP]

Toxic Substances Control Act (TSCA) Collaborative Research Program To Support New Chemical Reviews; Notice of Public Meeting and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is holding a virtual public meeting to seek individual input on the proposed Toxic Substances Control Act (TSCA) New Chemicals Collaborative Research Program. This virtual meeting will be held over 2 half days. In addition, EPA is announcing the availability of and soliciting public comment on the draft document entitled ''Modernizing the Process and Bringing Innovative Science to Evaluate New Chemicals Under TSCA.'' The Office of Chemical Safety and Pollution Prevention (OCSPP) is proposing to develop and implement a multi-year collaborative research program focused on approaches for performing risk assessments on new chemical substances under TSCA. This effort will be performed in partnership with the Agency's Office of Research and Development (ORD) and other federal entities to leverage their expertise and resources. The results of the effort are expected to bring innovative science to new chemical reviews, modernize the approaches used, and increase the transparency of the information underpinning the human health and ecological risk assessment process.

DATES:

Virtual Public Meeting: Will be held virtually on April 20 and 21, 2022, from 1:00 p.m. to approximately 5:00 p.m. (EDT) each day. See the additional details and instructions for registration that appear in Unit III.

Written Comments: Submit your written comments on or before April 26, 2022. As described in Unit III., you may also register to make oral comments during the virtual public meeting.

Special accommodations: Requests for special accommodations should be submitted on or before April 6th, 2022, to allow EPA time to process these requests.

ADDRESSES:

Virtual Public Meeting: You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the New Chemicals Collaborative Research Program website available at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/new-chemicals-collaborative* by March 14, 2022. For additional instructions related to this meeting, see Unit III.

Written Comments: Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0218, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Copyrighted material will not be posted without explicit permission of the copyright holder. Members of the public should also be aware that their personal contact information, if included in any written comments, may be posted on the internet at *https://www.regulations.gov.* Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. For further information on the EPA Docket Center (EPA/DC) services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact Sarah Swenson, listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sarah Swenson, Office of Chemical Safety and Pollution Prevention (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0279; email address: *swenson.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This notice is directed to the public in general. This notice may be of specific interest to persons who are or may be interested in risk assessments of new chemical substances under TSCA (*e.g.,* submitters of TSCA 5 notices, industry, non-governmental organizations (NGOs), and academia). Since other entities may also be interested in this notice, the EPA has not attempted to describe all the specific entities that may be interested in this subject.

B. Where can I access information about this meeting?

Information about this meeting is available in the docket for this meeting, identified by docket ID number EPA–HQ–OPPT–2022–0218, at *https://www.regulations.gov.*

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see Tips for Effective Comments at *https://www.epa.gov/dockets.*

II. Background

A. What is the proposed TSCA New Chemicals Collaborative Research Program?

OCSPP is proposing to develop and implement a multi-year collaborative research program focused on approaches for performing risk assessments on new chemical substances under TSCA. This effort will be performed in partnership with ORD and other federal entities to leverage their expertise and resources. The results of the effort are expected to bring innovative science to new chemical reviews, modernize the approaches used, and increase the transparency of the human health and ecological risk assessment process.

This research program will refine existing approaches and develop and implement new approach methodologies (NAMs) to ensure the best available science is used in TSCA new chemical evaluations. Key areas proposed in the TSCA New Chemicals Collaborative Research Program include:

- Updating OCSPP's approach to using data from structurally-similar chemicals to determine potential risks from new chemicals, also known as read-across. This will increase the efficiency of new chemical reviews promoting the use of the best available data to protect human health and the environment.
- Digitizing and consolidating information on chemicals to include data and studies that currently only exist in hard copy or in various disparate TSCA databases. The information will be combined with publicly available sources to expand the amount of information available, enhancing chemical reviews and enabling efficient sharing of chemical information across EPA. Safeguards for confidential business information will be maintained as appropriate in this process.
- Updating and augmenting the models used for predicting a chemical's physical-chemical properties and environmental fate/transport, hazard, exposure, and toxicokinetics, to provide a suite of models to be used for new chemicals assessments. The goal of this effort is to update the models to reflect the best available science, increase transparency, and establish a process for updating these models as science evolves.
- Exploring ways to integrate and apply NAMs in new chemicals assessments, reducing the use of animal testing. As this effort evolves, the goal is to develop a suite of accepted, fit-for-purpose NAMs that could be used by external stakeholders for data submissions under TSCA as well as informing and expanding new chemical categories.
- Developing a decision support tool that integrates the various information streams specifically used for new chemical risk assessments. The decision support tool will more efficiently integrate all the data streams (*e.g.,* chemistry, fate, exposures, hazards) into a final risk assessment and transparently document the decisions and assumptions made. Simply put, this will facilitate the new chemicals program tracking decisions over time and evaluating consistency within and across chemistries.

Additional information on each of these key areas will be provided in draft collaborative research plan that will be available in the docket in by March 14, 2022.

B. How is EPA seeking public comments?

EPA is seeking public comments through several planned activities including:

- Through this **Federal Register** Notice, EPA is announcing it intends to have a virtual public meeting on April 20 and 21, 2022, to seek individual input from the public on the proposed TSCA New Chemicals Collaborative Research Program. The agenda and instructions for registration for this meeting will be added to the EPA website and public docket March 14, 2022.
- At the same time, EPA will launch the website for this collaborative research program. EPA intends to make the collaborative research program document and charge questions available during the week of March 14, 2022 and will issue a listserv to alert the public when these documents become available. The date the documents are added to the docket will start the official 60 days public comment period.
- Following the virtual public meeting, EPA intends to update the draft collaborative research program document as appropriate, and will place the document in the relevant docket, ID number EPA–HQ–OPPT–2022–0218.
- Later in 2022, the Agency is planning to engage the EPA's Board of Scientific Counselors (BOSC), a federal advisory committee, for peer review; EPA also intends to issue a **Federal Register** Notice announcing the BOSC meeting and open a docket for public comments.
- EPA intends to solicit public comment at various points in the development and implementation of the collaborative research program, and

• Conduct additional outreach to external stakeholders through a variety of mechanisms as appropriate, to receive input and enhance transparency.

C. How can I access the documents?

EPA's background documents and the related supporting materials to the draft are available in the docket established for this meeting at *https://www.regulations.gov;* docket ID number EPA–HQ–OPPT–2022–0218. In addition, EPA will provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, in the docket at *https://www.regulations.gov.*

After the virtual public meeting, the EPA will prepare meeting minutes summarizing the individual comments received at the meeting. The meeting minutes will be posted on the EPA website and in the relevant docket.

III. Public Participation Instructions

To participate in the virtual public meeting, please follow the instructions in this unit.

A. How can I provide comments?

To ensure proper receipt of comments it is imperative that you identify docket ID number EPA–HQ–OPPT–2022–0218 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages written comments for the virtual public meeting. Comments should be submitted using the instructions in **ADDRESSES** and Unit I.B. and C, on or before the date set in the **DATES** section. Anyone submitting written comments after this date should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If you submit comments after the date set in the **DATES** section, those comments will be provided to the SACC members.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments during the virtual public meeting to please follow the registration instructions that will be announced on the EPA website available at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/new-chemicals-collaborative* by March 14, 2022.

Oral comments during the virtual public meeting are limited to 5 minutes unless arrangements have been made prior to the date set in the **DATES** section. In addition, each speaker should email a copy of his/her comments to the individual listed under **FOR FURTHER INFORMATION CONTACT** March 28, 2022 prior to the meeting.

B. How can I participate in the virtual public meeting?

This meeting is virtual and viewed via webcast. For information on how to first register and then view the webcast, please refer to the EPA website available at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/new-chemicals-collaborative.* EPA intends to announce registration instructions on the EPA website by March 14, 2022.

Authority: 15 U.S.C. 2601 *et seq.*

Michal Freedhoff,

Assistant Administrator, Office of Chemicals Safety and Pollution Prevention.

[FR Doc. 2022–04039 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9542–01–OAR]

Preliminary Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2021 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed preliminary calculations for the allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2021 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) before determining the final amounts of the allocations.

DATES: Objections to the information referenced in this notice must be received on or before March 28, 2022.

ADDRESSES: Submit your objections via email to *CSAPR_NUSA@epa.gov.* Include ''2021 NUSA allocations'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), 97.811(b) and 97.812 (NO_X Ozone Season Group 2), and 97.1011(b) and 97.1012 (NO_X Ozone Season Group 3). Each NUSA allowance allocation process involves allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.[1]

This notice concerns preliminary calculations for the NUSA allowance allocations for the 2021 control periods. Generally, the allocation procedures call for each eligible ''new'' unit to receive a 2021 NUSA allocation equal to its 2021 control period emissions as reported under 40 CFR part 75 unless the total of such allocations to all such eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis. (EPA notes that, under 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), 97.806(c)(3), and 97.1006(c)(3), a unit's emissions occuring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations.) Any allowances not allocated to eligible ''new'' units are allocated to the state's ''existing'' units in proportion to such existing units' previous allocations from the portion of the respective state's emissions budget for the control period that was not reserved in a NUSA (or Indian country NUSA).

[1] For control periods before 2021, the NUSA allocation process involved two rounds of allocations. The current one-round process for all CSAPR trading programs was adopted in the Revised CSAPR Update. Refer to 86 FR 23054, 23145–46 (April 30, 2021).

The detailed unit-by-unit data and preliminary allowance allocation calculations for ''new'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2021_NO_X_Annual_Prelim_Data_New_Units'', ''CSAPR_NUSA_2021_NO_X_OS_Prelim_Data_New_Units'', and ''CSAPR_NUSA_2021_SO_2_Prelim_Data_New_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-allowance-allocations#nusa.* Each of the spreadsheets contains a separate worksheet for each state covered by that program showing, for each unit identified as eligible for a NUSA allocation, (1) the unit's emissions in the 2021 control period (annual or ozone season as applicable), (2) the maximum 2021 NUSA allowance allocation for which the unit is eligible (typically the unit's emissions in the 2021 control period), (3) various adjustments to the unit's maximum allocation if the NUSA pool is oversubscribed, and (4) the preliminary calculation of the unit's 2021 NUSA allowance allocation.

Each state worksheet for ''new'' units also contains a summary showing (1) the quantity of allowances initially available in that state's 2021 NUSA, (2) the sum of the 2021 NUSA allowance allocations that will be made to new units in that state, assuming there are no corrections to the data, and (3) the quantity of allowances that would remain in the 2021 NUSA for allocation to existing units, again assuming there are no corrections to the data.

The preliminary calculations of allocations of the remaining unallocated allowances to ''existing'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2021_NO_X_Annual_Prelim_Data_Existing_Units'', ''CSAPR_NUSA_2021_NO_X_OS_Prelim_Data_Existing_Units'', and ''CSAPR_NUSA_2021_SO_2_Prelim_Data_Existing_Units'', available at the same location.

Objections should be strictly limited to the data and calculations upon which the NUSA allowance allocations are based and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data and/or calculations the commenter believes are inaccurate, (2) new proposed data and/or calculations upon which the commenter believes EPA should rely instead to determine allowance allocations, and (3) the reasons why EPA should rely on the commenter's proposed data and/or calculations and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that, under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), 97.811(c), and 97.1011(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), 97.811(b), and 97.1011(b).)

Rona Birnbaum,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2022–04031 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9337–01–OW]

Notice of Availability of the Deepwater Horizon Oil Spill Texas Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #2: Restoration of Wetlands, Coastal, and Nearshore Habitats; Nutrient Reduction; Oysters; Sea Turtles; and Birds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for public comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the federal and state natural resource trustee agencies for the Texas Trustee Implementation Group (Texas TIG) prepared the Draft Restoration Plan/Environmental Assessment #2: Restoration of Wetlands, Coastal, and Nearshore Habitats; Nutrient Reduction; Oysters; Sea Turtles; and Birds (Draft RP/EA #2). The Draft RP/EA #2 describes and proposes restoration project alternatives considered by the Texas TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The Texas TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations and evaluated the environmental consequences of the restoration alternatives in accordance with the NEPA. The proposed projects are consistent with the restoration alternatives selected in the Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (PDARP/PEIS). This notice informs the public of the availability of the Draft RP/EA #2 and provides an opportunity for the public to submit comments on the document.

DATES: The Texas TIG will consider public comments received on or before March 28, 2022.

Public Webinar: The Texas TIG will conduct a public webinar on March 9, 2022, at 6 p.m. Central Standard Time to facilitate public review and comment on the Draft RP/EA #2. The public webinar will include a presentation on the Draft RP/EA #2. Public comments will be taken during the public webinar. The public may register for the webinar at *https://attendee.gotowebinar.com/register/2667653123715836432.* After registering, participants will receive a confirmation email with instructions for joining the webinar. The presentation will be posted on the web after the webinar is conducted.

ADDRESSES:

Obtaining Documents: You may download the Draft RP/EA #2 at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/texas.* Alternatively, you may request a compact disc (CD) of the Draft RP/EA #2 (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/texas.*

Submitting Comments: You may submit comments on the Draft RP/EA #2 by one of the following methods:

- *Via the Web: https://parkplanning.nps.gov/TXRP2.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345.
- *During the Public Webinar:* Comments may be provided by the public during the webinar on March 9, 2022.

Once submitted, comments cannot be edited or withdrawn. The Texas TIG may publish any comment received regarding the document. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The Texas TIG will generally not consider comments or comment contents located outside of the written submission (*i.e.,* on the web, cloud, or other file sharing system). Please be aware that your entire

comment, including your personal identifying information, will become part of the public record. Please note that mailed comments must be postmarked on or before the comment deadline of March 28, 2022.

FOR FURTHER INFORMATION CONTACT:

• Texas—Angela Schrift; *Angela.Schrift@tpwd.texas.gov;* 512–389–8755.

• EPA—Douglas Jacobson; *Jacobson.Doug@epa.gov;* 214–665–6692.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in the release of an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* oil spill under the OPA. Under the OPA, federal and state agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* oil spill Trustees are:

• U.S. Environmental Protection Agency (EPA);

• U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;

• National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;

• U.S. Department of Agriculture (USDA);

• State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;

• State of Mississippi Department of Environmental Quality;

• State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;

• State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and

• State of Texas Parks and Wildlife Department (TPWD), General Land Office (TGLO), and Commission on Environmental Quality (TCEQ).

On April 4, 2016, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Texas Restoration Area are chosen and managed by the Texas TIG. The Texas TIG is composed of the following Trustees: TPWD, TGLO, TCEQ, EPA, DOI, NOAA, USDA.

Background

In an October 2020 notice posted at *https://www.gulfspillrestoration.noaa.gov/2020/10/submit-your-ideas-texas-restoration-area-planning,* the Texas TIG requested public input on restoration project ideas in the Texas Restoration Area within the following restoration types: Wetlands, Coastal, and Nearshore Habitats, Nutrient Reduction, Oysters, Sea Turtles, and Birds. The Texas TIG reviewed and considered these restoration project ideas in developing the Draft RP/EA #2.

Overview of the Draft RP/EA

The Draft RP/EA #2 is being released in accordance with the OPA, NRDA implementing regulations, and the NEPA. In the Draft RP/EA #2, the Texas TIG presents to the public the Texas TIG's most recent plan to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The Draft RP/EA #2 evaluates a total of eighteen restoration project alternatives within the Texas Restoration Area. Of those, thirteen are identified as preferred alternatives. The Draft RP/EA #2 also evaluates a no-action alternative. The Draft RP/EA #2 proposes the following preferred project alternatives for each restoration type:

Wetlands, Coastal, and Nearshore Habitats

• Bird Island Cove Habitat Restoration—Construction;

• Bahia Grande Channel F Hydrologic Restoration;

• Follets Island Habitat Acquisition Phase 2; and

• Galveston Island Habitat Acquisition.

Nutrient Reduction

• Petronila Creek Constructed Wetlands Planning; and

• Petronila Creek Watershed Nutrient Reduction Initiative.

Oysters

• Landscape Scale Oyster Restoration in Galveston Bay.

Sea Turtles

• Upper Texas Coast Sea Turtle Rehabilitation Facility; and

• Lancha Sea Turtle Mitigation Plan.

Birds

• Laguna Vista Rookery Island Habitat Protection;

• Jones Bay Oystercatcher Habitat Restoration;

• San Antonio Bay Bird Island; and

• Texas Breeding Shorebird and Seabird Stewardship.

The total estimated cost of the preferred alternatives is approximately $39 million. One or more alternatives may be selected for implementation by the Texas TIG. Additional restoration planning for the Texas Restoration Area will continue.

Next Steps

The public is encouraged to review and comment on the Draft RP/EA #2. A public webinar is scheduled to help facilitate the public review and comment process. After the public comment period ends, the Texas TIG will consider the comments received before finalizing the Final RP/EA #2. A summary of comments received and the Texas TIG's responses and any revisions to the document, as appropriate, will be included in the final document.

Administrative Record

The documents comprising the Administrative Record for the Draft RP/EA #2 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA

regulations found at 15 CFR part 990, and the NEPA (42 U.S.C. 4321 *et seq.*).

Benita Best-Wong,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2022–03885 Filed 2–24–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2022–6005]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine whether or not a company has a good payment history. This form will enable EXIM to make a credit decision on a foreign buyer credit limit request submitted by a new or existing policy holder. Additionally, this form is used by those EXIM policy holders granted delegated authority to commit the Bank to a foreign buyer credit limit.

DATES: Comments should be received on or before April 26, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 99–14) or by email to *Mia.Johnson@exim.gov,* or by mail to Mia L. Johnson, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The form can be viewed at *http://www.exim.gov/sites/default/files/pub/pending/eib99-14.pdf.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 99–14 Export-Import Bank Trade Reference form.

OMB Number: 3048–0042.

Type of Review: Renew.

Need and Use: This form provides essential credit information used by EXIM credit officers when analyzing requests for export credit insurance/financing support, both short-term (360 days and less) and medium-term (longer than 360 days), for the export of their U.S. goods and services. Additionally, this form is an integral part of the short term Multi-Buyer export credit insurance policy for those policy holders granted foreign buyer discretionary credit limit authority (DCL). Multi-Buyer policy holders given DCL authority may use this form as the sole source or one piece among several sources of credit information for their internal foreign buyer credit decision which, in turn, commits EXIM's insurance.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 6,500.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 1,625 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 1,625 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $69,062 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $82,875.

Bassam Doughman,

IT Specialist.

[FR Doc. 2022–03976 Filed 2–24–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2022–6006]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Financial institutions interested in becoming an Approved Finance Provider (AFP) with EXIM must complete this application in order to obtain approval to make loans under EXIM insurance policies and/or enter into one or more Master Guarantee Agreements (MGA) with EXIM.

DATES: Comments must be received on or before April 26, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 10–06) or by email to *Mia.Johnson@exim.gov,* or by mail to Mia L. Johnson, Export-Import Bank, 811 Vermont Ave. NW, Washington, DC 20571.

The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib10_06.pdf.*

SUPPLEMENTARY INFORMATION: An AFP may participate in the Medium-Term Insurance, Bank Letter of Credit, and Financial Institution Buyer Credit programs as an insured lender, while AFPs approved for an MGA may apply for multiple loan or lease transactions to be guaranteed by EXIM.

EXIM uses the information provided in the form and the supplemental information required to be submitted with the form to determine whether the lender qualifies to participate in its lender insurance and guarantee programs. The details are necessary to evaluate whether the lender has the capital to fund potential transactions, proper due diligence procedures, and the monitoring capacity to carry out transactions.

Title and Form Number: EIB 10–06 Application for Approved Finance Provider.

OMB Number: 3048–0032.

Type of Review: Renew.

Need and Use: The information collected will allow EXIM to determine compliance and content for transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 25 hours.

Frequency of Reporting of Use: On occasion.

Government Expenses:

Reviewing Time per Year: 25 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,062.50 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $1,275.

Bassam Doughman,

IT Specialist.

[FR Doc. 2022–03978 Filed 2–24–22; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2021–3004]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. EXIM's financial institution policy holders provide this form to U.S. exporters, who certify to the eligibility of their exports for EXIM support. The completed forms are held by the financial institution policy holders, only to be submitted to EXIM in the event of a claim filing. A requirement of EXIM's policies is that the insured financial institution policy holder obtains a completed Exporter's Certificate at the time it provides financing for an export. This form will enable EXIM to identify the specific details of the export transaction. These details are necessary for determining the eligibility of claims for approval. EXIM staff and contractors review this information to assist in determining that an export transaction, on which a claim for non-payment has been submitted, meets all of the terms and conditions of the insurance coverage.

DATES: Comments must be received on or before March 28, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Jean Fitzgibbon, *jean.fitzgibbon@exim.gov,* Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Jean Fitzgibbon. 202–565–3620. The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib-94-07.pdf.*

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 94–07 Exporters Certificate for Use with a Short Term Export Credit Insurance Policy.

OMB Number: 3048–0041.

Type of Review: Regular.

Need and Use: EXIM uses the referenced form to obtain exporter certification regarding the export transaction, U.S. content, non-military use, non-nuclear use, compliance with EXIM's country cover policy, and their eligibility to participate in USG programs. These details are necessary to determine the legitimacy of claims submitted. It also provides the financial institution policy holder a check on the export transaction's eligibility, at the time it is fulfilling a financing request.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 240.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 60 hours.

Frequency of Reporting of Use: As required.

Government Expenses:

Reviewing time per year: 12 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $510 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $612.

Bassam Doughman,

IT Specialist.

[FR Doc. 2022–03973 Filed 2–24–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201377.

Agreement Name: CMA CGM/COSCO Brazil—Caribbean U.S. Gulf Vessel Sharing Agreement.

Parties: CMA CGM S.A. and COSCO Shipping Lines Co. Ltd.

Filing Party: Draughn Arbona; CMA CGM (America) LLC.

Synopsis: This Agreement authorizes CMA CGM and COSCO to share vessels with one another and cooperate on a liner service in the Trade between Brazil, Panama, Colombia, Jamaica, Mexico and the U.S. Gulf Coast.

Proposed Effective Date: 2/11/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/58503.

Agreement No.: 201263–004.

Agreement Name: Maersk/MSC/Zim Cooperative Working Agreement.

Parties: Maersk A/S and MSC Mediterranean Shipping Company SA (acting as a single party); and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment: (i) Reduces the number of jointly operated strings from two to one; (ii) sets forth the amount of space to be exchanged under the Agreement; and (iii) provides each party with a greater degree of autonomy with respect to the operation of the strings it provides. The amendment also makes a number of technical amendments, and restates the Agreement.

Proposed Effective Date: 4/2/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/14256.

Agreement No.: 201356–002.

Agreement Name: PFLG/NPDL Slot Charter Agreement.

Parties: Neptune Pacific Direct Line Pte. Ltd. and Pacific Forum Line (Group) Limited.

Filing Party: David Monroe; GKG Law.

Synopsis: The amendment updates the amount of space being chartered under the Agreement.

Proposed Effective Date: 2/17/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/39510.

Agreement No.: 201378

Agreement Name: NPDL/PFLG Slot Charter Agreement.

Parties: Neptune Pacific Direct Line Pte. Ltd. and Pacific Forum Line (Group) Limited.

Filing Party: David Monroe; GKG Law.

Synopsis: The purpose of this agreement is to allow NPDL to charter space to PFLG in the relevant trades.

Proposed Effective Date: 2/17/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/59502.

Dated: February 18, 2022.

William Cody,

Secretary.

[FR Doc. 2022–03955 Filed 2–24–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 14, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Harold Guyon (''Guy'') Townsend III, as co-trustee of the SRT 2015 LFG Trust, both of Kansas City, Missouri;* to join the Rowland Family Group, a group acting in concert, to acquire voting shares of Lead Financial Group, Inc., and thereby indirectly acquire voting shares of Lead Bank, both of Kansas City, Missouri. The Federal Reserve previously approved Sarah F. Rowland to serve as co-trustee of the Trust.

Board of Governors of the Federal Reserve System, February 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04053 Filed 2–24–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

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 the information collection requirements in the Children's Online Privacy Protection Act Rule (''COPPA Rule'' or ''Rule''). The clearance expires on March 31, 2022.

DATES: Comments must be submitted by March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Peder Magee, Attorney (202–326–3538), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Children's Online Privacy Protection Act Rule, 16 CFR part 312.

OMB Control Number: 3084–0117.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Abstract: The COPPA Rule requires certain commercial websites and online services to provide notice and obtain parents' consent before collecting, using, and/or disclosing personal information from children under age thirteen, with limited exceptions. The COPPA Rule contains certain statutorily required notice requirements that apply to operators of any website or online service directed to children and operators of any website or online service that have actual knowledge they are collecting personal information from children. The Rule also applies to operators that have actual knowledge that they collect personal information from users of another website or online service that is directed to children. Covered operators must, among other things: Provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure, with limited exceptions; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

Estimated Annual Burden Hours: 17,600.

Estimated Annual Labor Costs: $5,783,700.

Estimated Annual Non-Labor Costs: $0.

Request for Comment: On October 6, 2021, the Commission sought comment on the information collection requirements associated with the COPPA Rule. 86 FR 55609 (Oct. 6, 2021). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

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, like 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 making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do 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). In particular, do not include 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. 2022–04063 Filed 2–24–22; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

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 the information collection

requirements in the Alternative Fuels Rule (''Rule''). That clearance expires on March 30, 2022.

DATES: Comments must be submitted by March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Alternative Fuels Rule''), 16 CFR part 309.

OMB Control Number: 3084–0094.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 6,000 hours.

Estimated Annual Labor Costs: $175,298.

Estimated Non-Labor Costs: $3,040.

Abstract: The Energy Policy Act of 1992 established federal programs to encourage the development of alternative fuels and alternative fueled vehicles (''AFVs''). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. 42 U.S.C. 13232(a). Such labels must provide ''appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.'' The required labels must be ''simple and, where appropriate, consolidated with other labels providing information to the consumer.''

Pursuant to the Act, the Commission published the Alternative Fuels Rule in 1995, and the Rule was later amended in 2013. The Rule requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels. To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels. In addition, the Rule requires that distributors of non-liquid alternative vehicle fuel provide certifications of the fuel rating in each transfer to anyone who is not a consumer.

Request for Comment: On October 6, 2021, the Commission sought comment on the information collection requirements associated with the Privacy Rule. 86 FR 55607 (Oct. 6, 2021). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

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, like 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 making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do 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). In particular, do not include 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. 2022–03956 Filed 2–24–22; 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 (OMB) clearance for information collection requirements contained in the rules and regulations under the Health Breach Notification Rule (or Rule). That clearance expires on June 30, 2022.

DATES: Comments must be received on or before April 26, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Health Breach Notification Rule; 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, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ryan Mehm, Attorney, Bureau of Consumer Protection, (202) 326–2918, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Health Breach Notification Rule.

OMB Control Number: 3084–0150.

Type of Review: Extension of a currently approved collection.

Abstract: The Health Breach Notification Rule (Rule), 16 CFR part 318, requires vendors of personal health records (PHR) and PHR related entities to provide notice to: (1) Consumers whose unsecured personally identifiable health information has been reached; (2) the Commission; and (3) in some cases, the media. The Rule only applies to electronic health records and does not include recordkeeping requirements. The Rule requires third party service providers (*e.g.,* those companies that provide services such as billing or data storage) to vendors of personal health records and PHR related entities to provide notification to such vendors and PHR related entities following the discovery of a breach. To notify the FTC of a breach, the Commission developed a simple, two-page form, which is posted at *https://www.ftc.gov/system/files/documents/rules/health-breach-notification-rule/health_breach_form.pdf*

Likely Respondents: Vendors of personal health records, PHR related entities and third party service providers.

Estimated Annual Hours Burden: 4,654.

Estimated Frequency: 2,500 single-person breaches per year and 0.33 major breaches per year.

Total Annual Labor Cost: $90,741.

Total Annual Capital or Other Non-Labor Cost: $31,056.

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 extend the existing clearance for the information collection requirements contained in the Commission's Health Breach Notification Rule.

Burden Estimates

Brief Description of the Need for and Proposed Use of the Information

The Health Breach Notification Rule (Rule), 16 CFR part 318 (OMB Control Number 3084–0150), requires vendors of personal health records and PHR related entities to provide notice to: (1) Consumers whose unsecured personally identifiable health information has been breached; (2) the Commission; and (3) in some cases, the media.[1] Under the Rule, consumers whose unsecured, individually identifiable health information has been breached must receive notice ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of the breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from potential harm resulting from the breach. To notify the FTC of a breach, the Commission developed a simple, two-page form, which is posted at *https://www.ftc.gov/system/files/documents/rules/health-breach-notification-rule/health_breach_form.pdf.* For breaches involving the health information of 500 or more individuals, entities must notify the Commission as soon as possible, and in any event no later than ten business days after discovering the breach. Entities may report all breaches involving the information of fewer than 500 individuals in an annual submission covering the prior calendar year. The Commission uses entities' notifications to compile a list of breaches affecting 500 or more individuals that is publicly available on the FTC's website. The list provides businesses with information about potential sources of data breaches, which is helpful to those developing data security procedures. It also provides the public with information about the extent of data breaches.

The Rule also requires third party service providers (*e.g.,* those companies that provide services such as billing or data storage) to vendors of personal health records and PHR related entities to provide notification to such vendors and PHR related entities following the discovery of a breach.

The Rule only applies to electronic health records and does not include recordkeeping requirements.

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 extend the existing clearance for the information collection requirements contained in the Rule.

Burden Estimates

The PRA burden of the Rule's requirements depends on a variety of factors, including the number of covered firms; the percentage of such firms that will experience a breach requiring further investigation and, if necessary, the sending of breach notices; and the number of consumers notified. The annual hours and cost estimates below likely overstate the burden because, among other things, they assume, though it is not necessarily so, that all covered firms experiencing breaches subject to the Rule's notification requirements will be required to take all of the steps described below.

The analysis may also overstate the burden of the Rule's requirements because it assumes that covered firms would not take any of the steps described were it not for the requirements of the Rule. For example, the analysis incorporates labor costs associated with understanding what information has been breached. It seems likely that some firms would incur such costs even in the absence of the Rule's requirements because the firms are independently interested in identifying, understanding, and remediating security risks. A company that investigates, for its own purposes, what information has been breached is unlikely to fully duplicate the costs of that investigation in complying with the Rule. Therefore, it may not be correct in all cases that complying with the Rule results in added labor costs for this activity. Nevertheless, in order to allow for a complete understanding of all the potential costs associated with compliance, these costs are included in this analysis.

At the time the Rule was issued in 2009, insufficient data was available about the incidence of breaches in the PHR industry. Accordingly, staff based its burden estimate on data pertaining to private sector breaches across multiple industries. Staff estimated that there would be 11 breaches per year requiring notification of 232,000 consumers. In 2016, based on available data from the years 2010 through 2014, staff arrived at new estimates, projecting an average of two breaches per year affecting a total of 40,000 individual consumers.

The Rule has now been in effect for over ten years, and new data regarding the number and scale of reported breaches from 2017 through 2021 allow staff to update its burden estimates. A review of the breach reports received by the FTC from 2010 through 2021 reveals that there are two primary categories of breaches reported: (1) ''single-person breaches,'' incidents in which a single individual's information is potentially compromised; and (2) what are hereafter described as ''major breaches,'' in which multiple—and typically, many—individuals are affected. These two categories of breaches are addressed separately in this analysis because the frequency and costs of the categories differ significantly.

Nearly all of the submissions received between 2010 and 2021—over 99% of them—reported single-person breaches related to an individual's loss of control over his or her login credentials. The rate of such breaches has fluctuated significantly since the Rule went into effect. Whereas from 2011 to 2014 the average annual number of single-person breaches was 7,502, from 2014 to 2017 the average was almost 15,000. From 2018 to 2021, the rate dropped significantly to 2,500. Assuming that this rate continues, staff estimates that between 2022 and 2025 the agency will receive, on average, about 2,500 single-person breach reports per year.

By contrast, major breach reports are quite infrequent. On average, the FTC receives one major breach report approximately every two and a half years, with an average of approximately 200,000 persons affected. Given the low frequency at which major breaches occur, FTC staff are unable to identify any meaningful trends in the frequency of major breach reports. FTC staff has not identified any existing research allowing us to make specific projections about future variation in the frequency of major breaches. Consequently, FTC staff has assumed that the average frequency and scale of major breaches

[1] On September 15, 2021, the Commission, in light of changes in the marketplace, issued a Policy Statement that clarified that the Rule applies to most health apps and similar technologies that are not covered by the Health Insurance Portability and Accountability Act (''HIPAA''). Statement of the Commission on Breaches by Health Apps and Other Connected Devices, Fed. Trade Comm'n (Sept. 15, 2021), available at: *https://www.ftc.gov/system/files/documents/public_statements/1596364/statement_of_the_commission_on_breaches_by_health_apps_and_other_connected_devices.pdf* (''Policy Statement'').

will remain more or less static. Staff's calculations are based on the estimate that a major breach will occur approximately every two and a half years and that 200,000 people will be affected by each major breach, for an annual average of 80,000 individuals affected per year.

Estimated Annual Burden Hours: 4,654.

As explained in more detail within the next section, FTC staff projects that the employee time required for each single-person breach is quite minimal because the processes for notifying consumers are largely automated and single-person breaches can be reported to the FTC in an aggregate annual notification using the FTC's two-page form. On average, staff estimates that covered firms will require approximately 20 seconds of employee labor per single-person breach. With an estimated 2,500 single-person breaches per year, the total estimated burden hours for single-person breaches is approximately 14 hours.

For each major breach, covered firms will require on average 100 hours of employee labor to determine what information has been breached, identify affected customers, prepare the breach notice, and submit the required report to the Commission. Based on staff's estimate that one major breach occurs every two and a half years, the average annual burden of major breaches amounts to 40 hours per year.

Additionally, covered firms will incur labor costs associated with processing calls they may receive in the event of a major breach. The Rule requires that covered firms that fail to contact 10 or more consumers because of insufficient or out-of-date contact information must provide substitute notice through either a clear and conspicuous posting on their website or media notice. Such substitute notice must include a toll-free number for the purpose of allowing a consumer to learn whether or not his/her information was affected by the breach.

Individuals contacted directly will have already received this information. Staff estimates that no more than 10 percent of affected consumers will utilize the offered toll-free number. Thus, of the 200,000 consumers affected by a major breach, staff estimates that 20,000 may call the companies over the 90 days they are required to provide such access. Staff additionally projects that 10,000 additional consumers who are not affected by the breach will also call the companies during this period. Staff estimates that processing all 30,000 calls will require an average of 11,500 hours of employee labor resulting in an average annual burden of 4,600 labor hours. Given the low frequency of major breaches, the annual average requirement for major breaches is 4,640 hours.

The combined annual hours burden for both single-person and major breaches therefore is 4,654 (4,640 + 14).

Estimated Annual Labor Costs: $90,741.

For each single-person breach, FTC staff estimates that the average 20 seconds of employee labor to provide (likely automated) notification to affected individuals and produce an annual breach notification for submission to the FTC will cost approximately $0.27 per breach. With an estimated 2,500 single-person breaches per year, the annual labor costs associated with all single-person breaches come to $675.

For major breaches, FTC staff projects that the average 100 hours of employee labor costs (excluding outside forensic services, discussed below as estimated non-labor costs) to determine what information has been breached, identify the affected customers, prepare the breach notice, and report to the Commission will cost an average of $66.66 per hour for a total of $6,666.[2] Based on an estimated one breach every two and a half years, the annual employee labor cost burden for affected entities to perform these tasks is $2,666.

Additionally, staff expects covered firms will require, for each major breach, 11,500 hours of labor associated with answering consumer telephone calls at a cost of $218,500.[3] Since a major breach occurs approximately every two and a half years, the average annual burden of 4,600 labor hours results in annualized labor cost of approximately $87,400.

Accordingly, estimated cumulative annual labor costs, excluding outside forensic services, for both single-person and major breaches, is $90,741 ($87,400 + $2,666 + $675).

Estimated Annual Capital and Other Non-Labor Costs: $31,056.

Commission staff estimates that capital and other non-labor costs associated with single-person breaches will be negligible. Companies generally use automated notification systems to notify consumers of single-person breaches. Automated notifications are typically delivered by email or other electronic methods. The costs of providing such electronic notifications are minimal.

Commission staff anticipates that capital and other non-labor costs associated with major breaches will consist of the following:

1. Services of a forensic expert in investigating the breach;

2. notification of consumers via email, mail, web posting, or media; and

3. the cost of setting up a toll-free number, if needed.

Staff estimates that, for each major breach, covered firms will require 240 hours of a forensic expert's time, at a cumulative cost of $37,440 for each breach. This estimate is based on a projection that an average major breach will affect approximately 20 machines and that a forensic analyst will require about 12 hours per machine to conduct his or her analysis. The projected cost of retaining the forensic analyst consists of the hourly wages of an information security analyst ($52), tripled to reflect profits and overhead for an outside consultant ($156), and multiplied by 240 hours. Based on the estimate that there will be one major breach every two and a half years, the annual cost associated with the services of an outside forensic expert is $14,976.

As explained above, staff estimates that an average of 200,000 consumers will be entitled to notification of each major breach. Given the online relationship between consumers and vendors of personal health records and PHR related entities, most notifications will be made by email and the cost of such notifications will be minimal.

In some cases, however, vendors of personal health records and PHR related entities will need to notify individuals by postal mail, either because these individuals have asked for such notification, or because the email addresses of these individuals are not current or not working. Staff estimates that the cost of a mailed notice is $0.11 for the paper and envelope, and $0.58 for a first class stamp. Assuming that vendors of personal health records and PHR related entities will need to notify by postal mail 10 percent of the 200,000 customers whose information is breached, the estimated cost of this notification will be $13,800 per breach. The annual cost will be around $5,520.

In addition, vendors of personal health records and PHR related entities may need to notify consumers by

[2] Hourly wages throughout this document are based on mean hourly wages found at *http://www.bls.gov/news.release/ocwage.htm* (''Occupational Employment and Wages—May 2020,'' U.S. Department of Labor, released March 2021, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2020'').

The breakdown of labor hours and costs is as follows: 50 hours of computer and information systems managerial time at approximately $78 per hour; 12 hours of marketing manager time at $74 per hour; 33 hours of computer programmer time at $46 per hour; and 5 hours of legal staff time at $72 per hour.

[3] The cost of telephone operators is estimated at $19/hour.

posting a message on their home page, or by providing media notice. Staff estimates the cost of providing notice via website posting to be $0.08 per breached record, and the cost of providing notice via published media to be $0.04 per breached record. Applied to the above-stated estimate of 200,000 affected consumers, the estimated total cost of website notice will be $16,000, and the estimated total cost of media notice will be $8,000, yielding an estimated total per-breach cost for both forms of notice to consumers of $24,000. Annualized, this number is approximately $9,600 per year.

Finally, staff estimates that the cost of providing a toll-free number will depend on the costs associated with T1 lines sufficient to handle the projected call volume and the cost of obtaining a toll-free telephone number. Based on industry research, staff projects that affected entities may need two T1 lines at a cost of $1,800 for the 90-day period. In addition, staff estimates the cost of obtaining a dedicated toll-free line to be $100 per month. Accordingly, staff projects that the cost of obtaining two toll-free lines for 90 days will be $2,400. The total annualized cost for providing a toll-free number will be $960.

In sum, the total annual estimate for non-labor costs associated with major breaches is $31,056: $14,976 (services of a forensic expert) + $5,520 (cost of mail notifications) + $9,600 (cost of website and media notice) + $960 (cost of providing a toll-free number). Negligible non-labor costs are associated with single-person breaches.

The total estimated PRA annual cost burden is $90,741 for labor costs and $31,056 for non-labor costs, totaling approximately $121,797.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before April 26, 2022.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before April 26, 2022. Write ''Health Breach Notification Rule; PRA Comment: FTC File No. P072108'' on your comment. 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.

Due to the public health emergency in response to the COVID–19 outbreak and 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 prefer to file your comment on paper, write ''Health Breach Notification Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and 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; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

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 be filed in paper form, must be clearly labeled ''Confidential,'' and must 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 April 26, 2022. 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. 2022–03958 Filed 2–24–22; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112; Docket No. 2021–0001; Sequence No. 13]

Submission for OMB Review; Federal Management Regulation; State Agency Monthly Donation Report of Surplus Property, GSA Form 3040

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding State Agency Monthly Donation Report of Surplus Property, GSA Form 3040.

DATES: Submit comments on or before March 28, 2022.

ADDRESSES: Written comments and recommendations for this information

collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with 41 CFR 102–37.360, which requires a State Agency for Surplus Property (SASP) to submit annual reports of personal property donated to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 56.
Responses per Respondent: 4.
Total Responses: 224.
Hours per Response: 1.5.
Total Burden Hours: 336.

C. Public Comments

A 60-day notice published in the **Federal Register** at 86 FR 66564 on November 23, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.*

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–04016 Filed 2–24–22; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0014; Docket No. 2021–0001; Sequence No. 14]

Submission for OMB Review; Transfer Order-Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123

AGENCY: Federal Acquisition Service, General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Transfer Order-Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123.

DATES: *Submit comments on or before:* March 28, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Willett, Property Disposal Specialist, GSA Office of Personal Property Management, at telephone 703–605–2873 or via email to *christopher.willett@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Transfer Order-Surplus Personal Property and Continuation Sheet, Standard form (SF) 123, is used by a State Agency for Surplus Property (SASP) to donate Federal surplus personal property to public agencies, nonprofit educational or public health activities, programs for the elderly, service educational activities, and public airports. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

B. Annual Reporting Burden

Respondents (electronic): 30,890.
Respondents (manual): 312.
Total Number of Respondents: 31,202.
Total Hours per Response (electronic at .017 Hours per Response): 525.13.
Total Hours per Response (manual at .13 Hours per Response): 40.56.
Total Burden Hours: 565.69.

C. Public Comments

A 60-day notice published in the **Federal Register** at 86 FR 66564 on November 23, 2021. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, Standard Form (SF) 123, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–04015 Filed 2–24–22; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0475]

Submission for OMB Review; Administration for Native Americans Annual Data Report (ADR)

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a 2-year extension to the following information collection: Annual Data Report (ADR) (OMB# 0970–0475; expiration date: 2/28/2022). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ANA collects the information in the ADR on an annual basis to monitor the performance of grantees and better gauge grantee progress. The majority of grantees submit this information through the On-going Progress Report (OMB# 0970–0452), but there is a subset of about 80 grantees who still use the ADR and will

continue to use the ADR through the end of their grants.

The ADR information collection is conducted in accordance with sec. 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects.

Respondents: Tribal Government, Native non-profit organizations, and Tribal Colleges and Universities receiving ANA funding.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ANA ADR	80	1	1	80

Estimated Total Annual Burden Hours: 80.

Authority: 42 U.S.C. 2992.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–03991 Filed 2–24–22; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; ACF–801: Child Care and Development Fund (CCDF) Quarterly Case-Level Report, (OMB #0970–0167)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Care (OCC), Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF–801: CCDF Quarterly Case-Level Report (OMB #0970–0167, expiration 2/28/2022). OCC proposes minor changes to the response categories under the following three data elements: Child's gender, ethnicity, and race.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF–801 provides monthly case-level data on the children and families receiving direct child care services under CCDF. The ACF–801 case-level data are reported either monthly or quarterly. OCC added ''no response'' categories under the following three data elements: child's gender, ethnicity, and race.

Respondents: State and Territory Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ACF–801: CCDF Quarterly Case—Level Report	56	4	25	5,600

Estimated Total Annual Burden Hours: 5,600.

Authority: Section 658K of the Child Care and Development Block Grant Act (42 U.S.C. 9858); regulations 45 CFR 98.70 and 98.71.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–04000 Filed 2–24–22; 8:45 am]

BILLING CODE 4184–81–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1588]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exemptions From Substantial Equivalence Requirements for Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from substantial equivalence requirements for tobacco products.

DATES: Submit either electronic or written comments on the collection of information by April 26, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 26, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 26, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2013–N–1588 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Exemptions From Substantial Equivalence Requirements for Tobacco Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Exemptions From Substantial Equivalence Requirements for Tobacco Products

OMB Control Number 0910–0684—Extension

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

The FD&C Act, as amended by the Tobacco Control Act, requires that before a new tobacco product may be introduced or delivered for introduction into interstate commerce, the new tobacco product must undergo

premarket review by FDA. FDA must issue an order authorizing the commercial distribution of the new tobacco product or find the product exempt from the requirements of substantial equivalence under section 910(a)(2)(A) of the FD&C Act (21 U.S.C. 387j(a)(2)(A)), before the product may be introduced into commercial distribution.

On May 10, 2016, FDA issued a rule extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974) (''the final deeming rule'').

FDA has established a pathway for manufacturers to request exemptions from the substantial equivalence requirements of the FD&C Act in § 1107.1 (21 CFR 1107.1) of the Agency's regulations. As described in § 1107.1(a), FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, from the requirement of demonstrating substantial equivalence if the Agency determines that: (1) The modification would be a minor modification of a tobacco product that can be sold under the FD&C Act; (2) a report demonstrating substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for the protection of public health; and (3) an exemption is otherwise appropriate.

Section 1107.1(b) states that a request for exemption under section 905(j)(3) of the FD&C Act (21 U.S.C. 387e(j)(3)) may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product and that the manufacturer must submit the request and all information supporting it to FDA. The request must be made in an electronic format that FDA can process, review, and archive (or a written request must be made by the manufacturer explaining in detail why the manufacturer cannot submit the request in an electronic format and requesting an alternative means of submission to the electronic format).

An exemption request must contain: (1) The manufacturer's address and contact information; (2) identification of the tobacco product(s); (3) a detailed explanation of the purpose for the modification; (4) a detailed description of the modification, including a statement as to whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of the existing tobacco additive; (5) a detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the FD&C Act; (6) a detailed explanation of why a report under section 905(j)(1) of the FD&C Act intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; (7) a certification (*i.e.,* a signed statement by a responsible official of the company) summarizing the supporting evidence and providing the rationale for the official's determination that the modification does not increase the tobacco product's appeal to or use by minors, toxicity, addictiveness, or abuse liability; (8) other information justifying an exemption; and (9) an environmental assessment (EA) under part 25 (21 CFR part 25) prepared in accordance with the requirements of § 25.40 (21 CFR 25.40).

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement for every major Federal action that will significantly affect the quality of the human environment.

The FDA NEPA regulations are contained in part 25. All applications for exemption from substantial equivalence require the submission of an EA. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) specifies the content requirements for EAs for non-excluded actions.

The information required by § 1107.1(b) is submitted to FDA so FDA can determine whether an exemption from substantial equivalence to the product is appropriate for the protection of the public health. Section 1107.1(c) states that FDA will review the information submitted and determine whether to grant or deny an exemption based on whether the criteria in section 905(j)(3) of the FD&C Act are met. FDA may request additional information if necessary, to make a determination and may consider the exemption request withdrawn if the information is not provided within the requested timeframe.

This collection of information requires a manufacturer to submit a report at least 90 days prior to making an introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product. Section 905(j)(1)(A)(ii) of the FD&C Act states that if an exemption has been requested and granted, the manufacturer must submit to FDA a report that demonstrates that the tobacco product is modified within the meaning of section 905(j)(3), the modifications are to a product that is commercially marketed and in compliance with the requirements of the FD&C Act, and all the modifications are covered by exemptions granted by the Secretary under section 905(j)(3).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section and activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
§ 1107.1(b) Optional Preparation of Tobacco Product Exemption From Substantial Equivalence Request Including § 25.40 Preparation of an Environmental Assessment					
§ 1107.1(b)—Preparation of tobacco product exemption from substantial equivalence request and § 25.40—Preparation of an environmental assessment	812	1	812	24	19,488
Total Hours (§ 1107.1(b))					19,488

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section and activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
§ 1107.1(c) Preparation of Additional Information for Tobacco Product Exemption From Substantial Equivalence Request					
§ 1107.1(c)—Preparation of additional information for tobacco product exemption from substantial equivalence request	150	1	150	3	450
Total Hours (§ 1107.1(c))					450
Section 905(j)(1)(A)(ii) of the FD&C Act: If exemption granted, report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant, and modifications covered by exemptions granted by Secretary under section 905(j)(3)					
Abbreviated report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant, and modifications covered by exemptions granted by Secretary under section 905(j)(3)	1,217	1	1,217	2	2,434
Total Hours (section 905(j)(1)(A)(ii)) of the FD&C Act					2,434
Total Hours Exemptions From Substantial Equivalence Requirements					22,372

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that we will receive 812 exemption requests under § 1107.1(b) for 24 hours per response including EA for a total of 19,488 hours. Since an EA is required for each § 1107.1(b) (Optional Preparation of Tobacco Product Exemption From Substantial Equivalence Request), the burden per response for EAs (12 hours) has been combined with the 12 hours for an SE request for a total of 24 hours per response.

FDA further estimates that we will receive 150 submissions requiring additional information in support of the initial exemption request, and it is expected that it will take an average of 3 hours to prepare the additional information for a total of 450 hours.

FDA estimates that 1,217 respondents will prepare 1,217 responses and each response will take approximately 2 hours to prepare, as required by section 905(j)(1)(A)(ii) of the FD&C Act, for a total of 2,434 hours.

Our estimated burden for the information collection reflects an overall decrease of 1,499 hours and 94 respondents. The estimates reflect a decrease of 1,217 hours to account for a reduction in average response time for preparing an abbreviated report. FDA provides a recommended format for applicants in the exemption order letter that significantly reduces the burden hours for preparing the abbreviated report. The estimates also reflect a decrease of 94 responses for submissions requiring additional information in support of the initial exemption request, which resulted in a decrease of 282 hours. We attribute this adjustment to the number of submissions we received over the last few years. Therefore, FDA now estimates the burden for exemptions from substantial equivalence requirements is 22,372 hours.

Dated: February 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–03992 Filed 2–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0377]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Health Document Submission

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the tobacco health document submission.

DATES: Submit either electronic or written comments on the collection of information by April 26, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 26, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 26, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2013–N–0377 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Health Document Submission.'' 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: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Tobacco Health Document Submission

OMB Control Number 0910–0654—Extension

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was enacted. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a new chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Additionally, section 101 of the Tobacco Control Act amended the FD&C Act by adding, among other things, new section 904(a)(4) (21 U.S.C. 387d(a)(4)).

Section 904(a)(4) of the FD&C Act requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009, ''that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives'' (herein referred to as ''tobacco health documents'').

The guidance document ''Health Document Submission Requirements for Tobacco Products (Revised)'' (2017) (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/tobacco-health-document-submission*) requests health documents based on statutory requirements and compliance dates.[1] As indicated in the guidance, all manufacturers and importers of tobacco products are now subject to the FD&C Act and are required to comply with section 904(a)(4), which requires immediate and ongoing submission of health documents developed after June 22, 2009 (the date of enactment of the Tobacco Control Act). However, FDA generally does not intend to enforce the requirement at this time with respect to

[1] FDA announced the availability of a guidance on this collection in the **Federal Register** on April 20, 2010 (75 FR 20606) (revised December 5, 2016 (81 FR 87565)).

all such health documents, so long as a specified set of documents, those developed between June 23, 2009, and December 31, 2009, are provided at least 90 days prior to the delivery for introduction of tobacco products into interstate commerce. Thereafter, manufacturers should preserve all health documents, including those that relate to products for further manufacturing and those developed after December 31, 2009, for future submission to FDA. All Agency guidance documents are issued in accordance with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time.

FDA is planning revisions to the guidance to reflect that the deemed tobacco product compliance period has passed. Additional revisions include clarifying and editorial changes to promote a better understanding of FDA's interpretation of the ''health, toxicological, behavioral, or physiologic'' phrase, examples of health, toxicological, behavioral, or physiologic effects documents, and minor updates to the metadata list.

FDA has been collecting the information submitted pursuant to section 904(a)(4) of the FD&C Act through a facilitative electronic form and through a paper form (Form FDA 3743) for those individuals who choose not to use the electronic method. On both forms, FDA is requesting the following information from firms that have not already reported or still have documents to report:

- Submitter identification
- Submitter type, company name, address, country, company headquarters Dun and Bradstreet D–U–N–S number, and FDA assigned Facility Establishment Identifier (FEI) number
- Submitter point of contact
- Contact name, title, position title, email, telephone, and Fax
- Submission format and contents (as applicable)
- Electronic documents: Media type, media quantity, size of submission, quantity of documents, file type, and file software
- Paper documents: Quantity of documents, quantity of volumes, and quantity of boxes
- Whether or not a submission is being provided
- Confirmation statement
- Identification and signature of submitter including name, company name, address, position title, email, telephone, and Fax
- Document categorization (as applicable): Relationship of the document or set of documents to the following:
  - Health, behavioral, toxicological, or physiological effects
  - Uniquely identified current or future tobacco product(s)
  - Category of current or future tobacco product(s)
  - Specific ingredient(s), constituent(s), component(s), or additive(s)
  - Class of ingredient(s), constituent(s), component(s), or additive(s)
- Document readability and accessibility: Keywords; glossary or explanation of any abbreviations, jargon, or internal (*e.g.,* code) names; special instructions for loading or compiling submission.
- Document metadata: Date document was created, document author(s), document recipient(s), document custodian, document title or identification number, beginning and ending Bates numbers, Bates number ranges for documents attached to a submitted email, document type, and whether the document is present in the University of California San Francisco's Truth Tobacco Documents database.

You may access the electronic form and paper form on our website, at *https://www.fda.gov/tobacco-products/manufacturing/submit-documents-ctp-portal* and *https://www.fda.gov/media/78652/download,* respectively. In addition to the electronic and paper forms, FDA issued the guidance on this collection to assist persons making tobacco health document submissions. For further assistance, FDA is providing a technical guide, embedded hints, and a web tutorial on the electronic portal.

FDA issued a final rule to deem products meeting the statutory definition of ''tobacco product'' to be subject to the FD&C Act on May 10, 2016 (81 FR 28973), which became effective on August 8, 2016. The FD&C Act provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco (RYO), smokeless tobacco, and any other tobacco products that the Agency by regulation deems to be subject to the law. This final rule extended the Agency's ''tobacco product'' authorities to all other categories of products that meet the statutory definition of ''tobacco product'' in the FD&C Act, except accessories of such deemed tobacco products.

For tobacco products subject to the deeming rule, FDA understands ''current or future tobacco products'' to refer to products commercially distributed on or after August 8, 2016, or products in any stage of research or development at any time after August 8, 2016, including experimental products and developmental products intended for introduction into the market for consumer use. For cigarettes, cigarette tobacco, RYO, and smokeless tobacco, FDA understands ''current or future tobacco products'' to refer to products commercially distributed on or after June 23, 2009, or products in any stage of research or development at any time after June 23, 2009, including experimental products and developmental products intended for introduction into the market for consumer use.

In the guidance on this collection, FDA indicated our intent to enforce the requirement at this time with respect to all such health documents relating to the deemed tobacco products, so long as a specified set of documents, those developed between June 23, 2009, and December 31, 2009, were submitted by February 8, 2017, or in the case of small-scale deemed tobacco product manufacturers (small-scale manufacturers), by November 8, 2017 (81 FR 28973 at 29008 and 29009). Additionally, FDA extended the compliance deadlines by an additional 6 months for small-scale manufacturers in the areas impacted by natural disasters to May 8, 2018. Thereafter, FDA's compliance plan requested deemed manufacturers provide tobacco health document submissions from the specified period, at least 90 days prior to the delivery for introduction into interstate commerce of tobacco products to which the health documents relate. Manufacturers or importers of cigarettes, cigarette tobacco, RYO, or smokeless tobacco products must provide all health documents developed between June 23, 2009, and December 31, 2009, at least 90 days prior to the delivery for introduction of tobacco products into interstate commerce.

FDA estimates 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
Tobacco Health Document Submissions and Form FDA 3743	10	3.2	32	50	1,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of documents received each year since the original collection period has fallen to less than 5 percent of what was received in the original collection period. FDA expects this is because documents created within the specified period should have already been submitted. The Agency bases this estimate on the total number of tobacco firms it is aware of and its experience with document production and the number of additional documents that have been reported each year since the original estimate of the reporting burden.

FDA estimates that a tobacco health document submission as required by section 904(a)(4) of the FD&C Act, will take approximately 50 hours per submission based on FDA experience. To derive the number of respondents for this provision, FDA assumes that very few manufacturers or importers, or agents thereof, would have health documents to submit. We anticipate documents will be submitted on an annual basis for a total of 10 respondents. FDA estimates the total annual reporting burden to be 1,600 hours.

Based on a review of the information collection of our current OMB approval, we have made no adjustments to our burden estimate.

Dated: February 16, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–03994 Filed 2–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from *https://www.genome.gov/about-nhgri/Institute-Advisors/National-Advisory-Council-for-Human-Genome-Research*. Any member of the public may submit written comments no later than 15 days after the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 16–17, 2022.

Closed: May 16, 2022, 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700–B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Open: May 16, 2022, 11:30 a.m. to 5:00 p.m.

Agenda: Report of Institute Director and Institute Staff.

Place: National Human Genome Research Institute, National Institutes of Health, 6700–B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Closed: May 17, 2022, 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700–B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700–B Rockledge Drive, Suite 1100, (301) 402–0838, *pozzattr@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 18, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04002 Filed 2–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Exercise and Alzheimer's Disease.

Date: March 22, 2022.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dario Dieguez, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, Bethesda, MD 20814, (301) 827–3101, *dario.dieguez@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 18, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04005 Filed 2–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Cognitive Systems Analysis and Aging.

Date: March 9, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 18, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04004 Filed 2–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Organoid Modeling of Neural Stimulants and HIV Comorbidity of Human Brain (R01–Clinical Trial Optional).

Date: March 21, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Stefan Wolff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 480–1448, *brian.wolff@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst. Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04003 Filed 2–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pediatric Centers of Excellence in Nephrology.

Date: April 11, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Teleconference).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 18, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04001 Filed 2–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0022; OMB No. 1660–0062]

Agency Information Collection Activities: Proposed Collection; Comment Request; State/Local/Tribal Hazard Mitigation Plans

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Kathleen Smith, Planning & Safety Branch Chief, Planning, Safety, and Building Science Division, Risk Management Directorate, Federal Insurance and Mitigation Administration, FEMA; *Kathleen.Smith2@fema.dhs.gov* and (202) 646–4372.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on September 14, 2021, at 86 FR 51174 with a 60-day public comment period. One public comment was received. FEMA acknowledges and appreciates the comment made; however, the comment was not germane to the program, meaning no further action was taken. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165, as amended by the Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390, provides the framework for linking pre-and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Title 44 CFR part 201 provides the mitigation planning requirements for State, local, Tribal, or Territorial governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0062.

FEMA Forms: FEMA Form not applicable.

Abstract: In order to be eligible for certain types of Federal emergency management non-emergency assistance, state, local, Tribal or Territorial governments are required to have a current FEMA-approved hazard mitigation plan that meets the criteria established in 44 CFR part 201.

Affected Public: State, local, Tribal or Territorial government.

Estimated Number of Respondents: 224.

Estimated Number of Responses: 1,131.

Estimated Total Annual Burden Hours: 175,928.

Estimated Total Annual Respondent Cost: $10,291,788.

Estimated Respondents' Operation and Maintenance Costs: $30,760,976.

Estimated Respondents' Capital and Start-Up Costs: $10,497,648.

Estimated Total Annual Cost to the Federal Government: $1,936,738.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Maile Arthur,

Deputy Director, Information Management Division, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–04055 Filed 2–24–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0018]

RIN 1660–ZA23

Hazard Mitigation Assistance: Building Resilient Infrastructure and Communities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing the *Building Resilient Infrastructure and Communities Policy.* This policy describes a new hazard mitigation grant program to assist States, territories, Tribes, and local governments with mitigating the impacts of natural hazards, including those created, aggravated, or amplified by climate change. The new program is funded by a FEMA 6 percent set aside of estimated disaster expenses for each major disaster, supersedes the Pre-Disaster Mitigation grant program, and promotes a national culture of preparedness through encouraging investments to protect communities and infrastructure by increasing pre-disaster hazard mitigation and strengthening national resilience.

DATES: This policy is effective April 26, 2022.

ADDRESSES: The docket for this policy is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Ryan Janda, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, 202–646–2659, *Ryan.Janda@fema.dhs.gov.* Hearing- or speech-impaired individuals may access this number through TTY by calling (800) 462–7585.

SUPPLEMENTARY INFORMATION:

I. Background and Proposed Policy

On October 5, 2018, the President signed into law the Disaster Recovery Reform Act [1] (DRRA). The DRRA contains fifty-six provisions that, among other things, (1) emphasize the shared responsibility for disaster response and recovery, (2) stress the importance of building the nation's capacity to deal with coming disasters and catastrophic events, and (3) recognize the need to reduce the complexity of, and administrative burdens in, FEMA's programs. Some of the highlights of the DRRA include new and additional authorities to reduce risk from future damage after a fire, increase State capacity to manage disaster recovery, provide greater flexibility to survivors with disabilities, and retain skilled response and recovery personnel. DRRA also contains provisions directing FEMA to produce plans, guidance, and reports to clarify terms and requirements, to identify best practices, and to simplify information collection.

On April 10, 2020, FEMA published a proposed policy entitled *Building Resilient Infrastructure and Communities* (BRIC) (85 FR 20291). The BRIC policy addresses Section 1234 of the DRRA, titled ''National Public Infrastructure Pre-Disaster Hazard Mitigation,'' which amended section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 *et seq.* Section 1234 of the DRRA authorizes FEMA to set aside 6 percent of estimated disaster expenses for each major disaster to fund the new BRIC grant program. BRIC supersedes the Pre-Disaster Mitigation (PDM) program [2] and promotes a national culture of preparedness through encouraging investments to protect our communities and infrastructure, strengthening pre-disaster mitigation capabilities, and fostering national resilience. The following principles guide the BRIC program:

- Support communities through capability- and capacity-building
- Encourage and enable innovation
- Promote partnerships
- Enable large projects
- Maintain flexibility
- Provide consistency and equal treatment
- Promote equity (including by eliminating unnecessary complexity and administrative burdens)
- Adapt to the various and growing hazards associated with climate change

The BRIC Policy provides a consistent framework and standing requirements for the program. FEMA will calculate the 6 percent set aside within 180 days after each major disaster and may set aside that amount from the Disaster Relief Fund into the National Public Infrastructure Pre-Disaster Mitigation Fund.[3] The total amount will vary year to year based on the estimated amount of disaster assistance for each major Presidentially-declared disaster, and the number of Presidentially-declared disasters in each year. On an annual basis, FEMA will assess the amount available in the National Public Infrastructure Pre-Disaster Mitigation Fund and determine what portion of it will be available for the next year's grant cycle. FEMA will announce this determination in the annual Notice of Funding Opportunity (NOFO),[4] which it will post for a period of time on its website prior to opening the application period.

Section 203 of the Stafford Act limits eligible applicants to States and territories that have had a major disaster declaration in the 7 years prior to the annual application period start date, and federally-recognized Tribes entirely or partially located in a State that has had a major disaster declaration in the 7 years prior to the application period start date.[5] Subapplicants include local governments and non-federally recognized Tribes,[6] who may apply to States and territories for funding. (Note that federally-recognized Tribes may apply as either applicants or subapplicants).[7]

In addition to determining annually the total amount to be made available for BRIC, FEMA may allocate from that amount to eligible States and territorial applicants, with a specific set-aside for Tribes, an allocation for mitigation capability- and capacity-building activities and mitigation projects, and make the remainder of the funding available competitively for mitigation projects. FEMA may also make a portion of funding available for management costs (costs to manage the grant) and non-financial technical assistance to all eligible entities. Funding for capability- and capacity-building activities and mitigation projects will generally be subject to a Federal cost share of up to 75 percent, and up to 90 percent for small impoverished communities.[8] Management costs may be funded up to 100 percent Federal share.

FEMA provides stakeholders with more detailed information about the program requirements through an annual NOFO process.[9] The NOFO addresses a variety of topics, including but not limited to:

- Important application dates
- Specific funding amounts and allowances
- Provision of technical assistance
- Codes and standards activities
- Application review process, including competition structure and merit criteria
- Method for determining cost-effectiveness
- Award administration information
- Additional requirements and guidelines

The guidance does not have the force or effect of law.

II. Discussion of Public Comments on the Proposed Policy

FEMA received 147 distinct public comments to the proposed policy. These included two mass mailings comprised of 11,068 comments from members of the National Wildlife Federation Action Fund and 19,665 comments from members of the National Audubon Society. Many of the public comments included several unique topic areas, each of which FEMA analyzed separately. In total, the comments addressed 902 unique topics. Commenters included Tribes, Tribal consortiums, non-profit organizations, private citizens, municipalities, state agencies and offices, professional

[1] Public Law 115–254, 132 stat. 3438.

[2] On September 9, 2019, FEMA posted a PDM notice of funding opportunity (NOFO) at *https://www.grants.gov/web/grants/view-opportunity.html?oppId=320395.* The NOFO clarified that fiscal year (FY) 2019 would be the last year that FEMA offered the PDM program, and that the PDM program would be superseded by BRIC in FY 2020. As the NOFO explains, the 2015 Hazard Mitigation Assistance (HMA) Guidance applies to the FY 2019 PDM grant program application cycle.

[3] 42 U.S.C. 5133(i).

[4] 2 CFR 200.203 sets forth the requirement to post a NOFO and the required contents of a NOFO.

[5] 42 U.S.C. 5133(g).

[6] 42 U.S.C. 5122(8).

[7] 42 U.S.C. 5123.

[8] 42 U.S.C. 5133(h).

[9] 2 CFR 200.203.

networks and associations, businesses, a school district and a public official.

FEMA reviewed and discussed each unique comment and considered whether to change the policy in response to the comment. Stakeholder feedback was taken into account in the design of the policy and in the updates to the policy. Because many commenters had similar comments about the same topics, FEMA organized the response to comments by topic. Some comments related to more than one topic and were therefore considered and counted under all applicable topics. A summary of these comments and FEMA's response is provided below.

Favorable Comments

FEMA received 108 favorable comments that noted direct support for the BRIC policy or program. These are summarized below.

Commenters wrote favorably about the stakeholder engagement process for the proposed policy. Many commenters expressed appreciation for the opportunity to provide comments on the proposed policy. Commenters also expressed appreciation for the stakeholder engagement process throughout the development of the proposed policy, including the comprehensive stakeholder engagement effort that occurred in the summer of 2019. FEMA is grateful to stakeholders for their engagement throughout the development of the proposed policy; they have provided meaningful input into the development of the BRIC program.

Many commenters provided favorable comments about the BRIC program. Commenters supported the principles of the BRIC program as follows:

Principle 1. Support State and local governments, Tribes, and Territories through capability- and capacity-building to enable them to identify mitigation actions and implement projects that reduce risks posed by natural hazards. Commenters were encouraged to see the importance of capability- and capacity-building as highlighted in the proposed policy. Commenters recognized that the continual funding for these activities will allow communities to use these funds to build and maintain capacity over time. FEMA notes the continual growth of community capacity is an intent of the BRIC program. FEMA is prioritizing that continual growth. FEMA further recognizes that the Nation's capability- and capacity-building needs will far exceed amounts available through BRIC, and intends for the allocation to support an applicant's highest priority requirements.

Principle 2. Encourage and enable innovation while allowing flexibility, consistency, and effectiveness. Commenters expressed support for the flexibility of the BRIC program, which allows not only for traditional mitigation projects, but also encourages and supports innovation. Commenters were energized and excited by the focus on innovation as a cornerstone of the proposed policy, but also stressed that traditional mitigation projects should always be eligible. FEMA notes its intent to maintain a wide variety of project type eligibility in the BRIC program.

Principle 3. Promote partnerships and enable high-impact investments to reduce risk from natural hazards with a focus on critical services and facilities, public infrastructure, public safety, public health, and communities. Commenters across all sectors expressed support for Principle 3. FEMA recognizes that many non-profits and other organizations have the capacity to assist communities in meeting non-Federal cost-share requirements and developing mitigation projects. For this reason, FEMA encourages communities to look for opportunities to partner with other organizations. Communities are best positioned to identify and develop mitigation projects for their citizens, and the communities' effort can be supported by non-profits and other organizations.

Principle 4. Provide a significant opportunity to reduce future losses and minimize impacts on the Disaster Relief Fund (DRF). Commenters expressed support for FEMA's forward-thinking approach of looking to reduce future losses. FEMA recognizes that adequately addressing future loss requires the consideration of the climate crisis and changing future conditions. FEMA will provide information on how future risk will be considered in the implementation of the BRIC program within the NOFO and program support materials.

Principle 5. Promote equity, including by helping members of disadvantaged groups and prioritizing 40 percent of the benefits to disadvantaged as referenced in Executive Order (E.O.) 14008 in line with the Administration's Justice40 initiative. This principle was added after the public comment period, so FEMA did not have an opportunity to receive comments on it.

Principle 6. Support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, taking into account future conditions, prominently including the effects of climate change, and have long-lasting impacts on community risk-reduction, including for critical services and facilities and for future disaster costs. Many commenters noted the importance of utilizing modern building codes in ensuring the resiliency of community infrastructure. FEMA strongly concurs, and encourages adoption and enforcement of, as well as require compliance with, all relevant consensus codes and standards for all projects in the BRIC program.

Commenters also expressed support for the 90 percent cost share for small impoverished communities and for the new definition of ''small impoverished,'' which no longer includes an unemployment metric. FEMA agrees that these changes will support small impoverished communities in need of assistance.

Information for Notice of Funding Opportunity and Program Support Materials

FEMA received 409 comments related to the NOFO and program support materials. These are summarized below.

Additional Information and Assistance. Many commenters requested additional information in the policy such as example projects, details about scoring criteria, technical assistance information, and an explanation of how funds will be allocated. FEMA appreciates the request and notes that the purpose of the policy is to provide the high-level requirements that will remain consistent in the BRIC program. Other information, such as annual allocations and scoring criteria, is more suitable for the annual NOFO as these matters relate to implementation and may change annually in the BRIC program. With the request in mind, FEMA will provide additional guidance, such as eligible project examples and information about technical assistance, in program support materials. Program support materials will include a variety of example projects ranging widely in scale and in geographic location. A central goal of those materials will be to decrease complexity and to make the various goals and requirements simpler and easier to navigate.

Types of Projects. Many commenters provided recommendations for the types of projects that FEMA should prioritize within the BRIC program. The most frequent recommendations included: Projects that incorporate nature-based solutions and green infrastructure; traditional, nonstructural flood reduction measures (such as acquisitions and buyouts); and projects that leverage existing projects, plans, and partnerships. The mass mailings received from the National Wildlife

Federation Action Fund and National Audubon Society promoted prioritization of nature-based solutions: The National Wildlife Federation Action Fund urged FEMA to prioritize community-wide, nature-based mitigation with pre-disaster funds, and the National Audubon Society urged FEMA to promote natural infrastructure solutions with BRIC funding. FEMA is strongly supportive of nature-based solutions and has released a Guide for Local Communities, ''Building Community Resilience With Nature-Based Solutions,'' on that topic. Additionally, FEMA is strongly supportive of nature-based solutions because FEMA considers these solutions to be consistent with the Federal Flood Risk Management Standard (FFRMS) under the reinstated Executive Order 13690 (Jan. 30, 2015).[10] FEMA will address priorities through the NOFO, as priorities are identified on an annual basis to allow for the development and flexibility of the BRIC program over time as new priorities are identified. FEMA will provide additional information about nature-based solutions in program support materials.

Definitions

Some commenters asked FEMA to define the terms used in the proposed policy. Commenters requested definitions, or changes to existing definitions, for the following terms: ''Critical facilities'', ''small impoverished communities'', ''resiliency'', ''large-scale public infrastructure'', ''non-construction'', and ''innovative''. FEMA appreciates the request and will provide definitions of new terms used in the policy in an ''Additional Information'' section of the policy. FEMA provides the following information to address comments:

- FEMA defines ''critical facilities'' in the glossary of the Hazard Mitigation Assistance (HMA) Guidance (2015) [11] to include structures and institutions necessary, in the community's judgment, for response to and recovery from emergencies. Critical facilities must continue to operate during and following a disaster to reduce the severity of impacts and accelerate recovery. This definition is for HMA program use and clarification and is not meant to provide a definition for use under other programs or supersede any FEMA regulation.
- The term ''small impoverished communities'' is statutorily defined at 42 U.S.C. 5133(a) to mean a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the state in which the community is located and based on criteria established by the President. As the term is statutorily defined, the maximum number of community members of 3,000 cannot be exceeded.
- FEMA will use the longstanding National Institute of Standards and Technology (NIST) definition of ''community resilience'' [12] to define ''resiliency'', which is the ability to prepare for anticipated hazards, adapt to changing conditions, and withstand and recover rapidly from disruptions. This definition of resilience is similar to the definition of ''resilience'' used in the Presidential Policy Directive 21 (2013).[13] FEMA provides the definition of ''resilience'' in policy.
- FEMA understands the concerns of small communities that public infrastructure size will differ for different size communities, and that small communities and large communities have different understandings of ''large-scale public infrastructure'' in the context of their communities. FEMA deleted the phrase ''large-scale'' before ''public infrastructure'' in the policy to avoid ambiguity or implication of a size requirement for public infrastructure.
- FEMA removed the sentence referencing ''non-construction'' from the policy and added a sentence to explain capability- and capacity-building activities that have already been initiated or completed are not eligible for funding. The term ''non-construction'' was intended to mean capability- and capacity-building activities.
- The term ''innovative'' should be defined by the community. FEMA will encourage communities to describe how their projects represent innovative actions.

Capability- and Capacity-Building

FEMA received 188 comments related to capability- and capacity-building. These are summarized below. FEMA will provide more information related to capability- and capacity-building in the NOFO and additional program support materials.

Activity Types. Commenters asked how applicants may use funds for capability- and capacity-building activities. FEMA notes that eligible capability- and capacity-building activities are listed in 42 U.S.C. 5133(e)(1)(B). Capability- and capacity-building activities enable communities to identify mitigation actions and implement projects that reduce risks posed by natural hazards. These activities are broad and flexible so communities may use funds to address specific community needs, but they must clearly contribute to the capability- and capacity-building of the applicant or subapplicant to mitigate hazards. FEMA offers the following clarifications in response to questions about capability and capacity building activities:

- Eligible planning activities may include creating or updating a community's hazard mitigation plan, building codes, zoning or land use plans.
- Capability- and capacity-building funds can be used for development or updates to mitigation priorities and plans. FEMA has edited the policy to make clear that updates may also be funded.
- Non-FEMA technical assistance providers and other educational expenses for staff are eligible capability- and capacity-building activities when consistent with program requirements.
- Capability- and capacity-building funds cannot be used to simply hire staff. If capability- and capacity-building funds contribute to a salary, there must be a deliverable that is tied to that position, such as updating a community's hazard mitigation plan.
- Capability- and capacity-building funds cannot be allocated toward the administration of approved projects. Management Costs can be applied for and funded to administer approved projects.

Technical Assistance (financial). FEMA received many requests for technical assistance to implement the proposed policy, including requests for technical assistance for specific project types including microgrids, coastal zone projects, and large-scale retrofits. Commenters also asked for clarity about the types of technical assistance that will be offered and who would receive it. FEMA appreciates these comments, because they fit with FEMA's general goal of increasing clarity and reducing complexity. To that end, FEMA will provide technical assistance through program support materials and webinars that will be available to all

[10] On May 20, 2021, President Biden issued Executive Order (E.O.) 14030, *Climate-Related Financial Risk,* reinstating E.O. 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (Jan. 30, 2015).

[11] Federal Emergency Management Agency, *Hazard Mitigation Assistance Guidance,* Feb. 27, 2015, available at *https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf.*

[12] *https://www.nist.gov/topics/community-resilience.*

[13] *https://www.cisa.gov/sites/default/files/publications/ISC-PPD-21-Implementation-White-Paper-2015-508.pdf.*

communities, including Tribes. While FEMA does not have capacity to provide individual technical assistance to each and every community assembling an application to the BRIC program, applicants may receive individual technical assistance from their FEMA regional offices. The level of technical assistance from FEMA regional offices might vary by region. FEMA will continue to provide benefit-cost analysis (BCA) technical assistance through the BCA Helpdesk, as well as helplines for the application system, FEMA GO, Environmental and Historic Preservation, and the HMA Program. FEMA will continue to pursue and prioritize additional opportunities to provide technical assistance in response to stakeholder feedback in future years. FEMA will also welcome continued feedback about how to improve technical assistance and make it as useful and available as possible.

Eligibility

FEMA received 564 comments relating to eligibility. These are summarized below with FEMA responses. FEMA will provide more information related to eligibility in the NOFO.

Applicant Eligibility. Commenters requested that eligibility be expanded to include other entities beyond States, territories and Tribes that have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date. Commenters also noted a gap in assistance available to homeowners and businesses to improve resiliency of properties. FEMA notes that 42 U.S.C. 5133(b) defines eligible applicants as State and local governments. FEMA also notes that 42 U.S.C. 5133(g) requires that the State or territory must have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date in order to be eligible. Consistent with other HMA programs, local governments are eligible as subapplicants within the BRIC program, but the award is made directly to the State or Territory.

Section 5133(g) also addresses an Indian Tribal government's eligibility. An Indian Tribal government (federally-recognized Tribe) that has received a major Federal disaster declaration under the Stafford Act in the seven years prior to the annual application period start date, or is entirely or partially located in a state that received a major Federal disaster declaration under the Stafford Act in the seven years prior to the annual application period start date, is eligible to apply under BRIC.[14] A federally recognized Tribe may apply as an applicant or subapplicant. If the Indian Tribal government chooses to apply as a subapplicant through the State, the State must have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date. FEMA has edited the policy to clarify that only federally recognized Tribes are eligible as applicants.

Section 5133 does not authorize private non-profits and other private sector entities such as businesses, industry associations, native corporations, and individuals to apply as applicants or subapplicants. However, FEMA edited the policy to highlight that applicants and subapplicants may apply for funding on behalf of individuals, and businesses, and non-profit organizations.

Hazard Mitigation Plans. Many commenters suggested eliminating the requirement of having a FEMA-approved hazard mitigation plan (HMP) at the time of application, citing this as a barrier to many communities applying to the BRIC program. Commenters recommended only requiring a FEMA-approved HMP at the time of award obligation, as this is all that is required under 44 CFR part 201. FEMA is maintaining the current requirement for an HMP at the time of application. Since an approved HMP is a condition of receiving assistance under 44 CFR part 201, FEMA checks for compliance with this condition at the time of application and obligation to ensure that the applicant meets the eligibility requirements. Requiring the HMP to be in the place at the time of application reduces the likelihood that applicants or subapplicants will not have a FEMA-approved HMP at the time of the award, and be ineligible for funding. If an HMP lapses after a BRIC award has been made, funding will not be stopped. FEMA will, however, encourage the HMP to be made effective as soon as possible, as a lapsed HMP could jeopardize the applicant's receipt of funds under other FEMA programs.

Discrimination and Social Equity. A number of commenters requested that FEMA distribute BRIC funding in a non-discriminatory manner and give priority to historically marginalized and disadvantaged groups to promote social equity. Commenters also asked FEMA to use a tiered approach where under-resourced or otherwise disadvantaged communities are considered separately from the larger competitive applicant pool. On January 20, 2021, the President issued Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' [15] which is designed to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The Executive Order required each agency to assess whether, and to what extent, its programs and policies create or perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups with the goal of developing policies and programs that deliver resources and benefits equitably to all. The policy already includes three items that contribute toward equity: 1. Inclusion of equity promotion in the Principles of the policy; 2. An increased Federal cost share for small impoverished communities; and 3. A requirement that recipients and subrecipients ensure that the program is accomplished in an equitable and impartial manner. In addition, FEMA is committed to equity and is continuing to assess through the NOFO process how to prioritize funding to deliver resources and benefits equitably. As OMB has emphasized,[16] one approach is to reduce paperwork and administrative burdens, which might cause serious problems in terms of equity. Regarding a tiered approach, FEMA is researching this topic for future program design considerations.

In addition, recipients of FEMA funding are required to comply with federal statutes that prohibit discrimination in federally funded programs and activities. FEMA will vigorously enforce these nondiscrimination statutes and require recipients to sign assurances of compliance with these laws.

Project Eligibility. Commenters asked if specific project types would be eligible for BRIC funding. The policy allows for traditionally eligible mitigation projects, and also encourages applicants to be innovative with their proposed projects. FEMA will provide more information about eligible project types in the program support materials and webinars. Clarity on some of the project types in response to comments received is provided below:

- Phased projects are eligible.

[14] *See* 42 U.S.C. 5123.

[15] 86 FR 7009 (Jan. 25, 2021).

[16] The White House, *Meeting a Milestone of President Biden's Whole-of-Government Equity Agenda,* (Aug. 6, 2021), *available at https://www.whitehouse.gov/omb/briefing-room/2021/08/06/meeting-a-milestone-of-president-bidens-whole-of-government-equity-agenda/.*

• Project-scoping activities (formerly known as Advance Assistance) are eligible as a capability- and capacity-building activity and will be limited by the allocation amount.

• Project monitoring is the responsibility of the applicant as stated in 2 CFR part 200 and will be stated in the NOFO. All work funded by the BRIC program must be completed within the period of performance of the grant, which does not allow costs for long-term monitoring after the end of the period of performance.

• Pre-award work that begins construction prior to award or prior to completion of compliance with the National Environmental Policy Act and other applicable environmental laws such as the Endangered Species Act and the National Historical Preservation Act cannot be funded. This requirement applies to the project as a whole regardless of what the Federal share of the project will fund. However, FEMA may approve and fund development of the mitigation application as pre-award costs in a subapplication. FEMA has edited the policy to clarify this point.

• For other Federal agencies' large projects, FEMA will not provide financial assistance if FEMA determines another Federal agency has more specific authority to support the project. FEMA understands commenters' concerns that the BRIC program could potentially fund very large, expensive projects (such as levee systems and dams), leaving less funding for smaller scale projects that are quicker to implement. However, there is no minimum on the amount of funding requested in the national competition. Additionally, there is a State and Territory allocation that could be used to fund smaller scale projects. Further, consistent with appropriation law principles, BRIC mitigation funds cannot be used as the non-federal cost-share for other federal agency grants.[17]

Managed Retreat and Relocation. Commenters asked about the eligibility of managed retreat and relocation projects. Managed retreat and relocation projects are eligible for BRIC funding. Managed retreat and relocation of entire communities are extensive projects with many different components. Applicants that seek funding for retreat and relocation activities should try to align the project components that the BRIC program will be funding with the annual priorities established each year in the NOFO.

Flood Insurance Requirements. Some commenters asked FEMA to waive flood insurance purchase requirements, and others asked FEMA to clarify when flood insurance requirements apply. Commenters also asked how flood insurance requirements are enforced. The purchase of flood insurance for federally-funded acquisition or construction projects in a Special Flood Hazard Area (SFHA) is a statutory requirement under 42 U.S.C. 4012a of the National Flood Insurance Act (NFIA). Community participation in the National Flood Insurance Program (NFIP) is required under 42 U.S.C. 4106 of the NFIA in order to receive Federal assistance for projects in a SFHA. FEMA does not have discretion to waive flood insurance requirements for federally-funded acquisition or construction projects in an SFHA. This requirement is only applicable to NFIP insurable structures. This requirement does not apply to non-building infrastructure, such as roads and bridges, or acquisition or demolition projects. Maintaining private flood insurance as an alternative to NFIP insurance is allowable as long as it is functionally equivalent to a standard NFIP flood insurance policy as stated in 42 U.S.C. 4012(a). Flood insurance requirements are enforced through deed restrictions that ensure flood insurance is maintained for the life of the property.

Coronavirus 2019 (COVID–19). Commenters requested edits to the proposed policy to address the threat of disease outbreaks directly and to allow for eligibility of projects that contribute directly to pandemic-resiliency activities. The statute that establishes the BRIC program, Section 1234 of the Disaster Recovery Reform Act, includes an instruction by Congress to focus mitigation projects on making infrastructure more resilient to natural hazards. Thus, FEMA declines to make any changes to the policy based on these comments. However, due to the nature of the BRIC program, there is an opportunity to use BRIC funds to support critical infrastructure that will also support the COVID–19 response efforts. For example, mitigating the risks to hospitals from hurricanes so that they can remain operational during a disaster. FEMA encourages projects that provide multiple benefits to society.

Code Requirements. FEMA received comments seeking clarity on the code requirements of the BRIC program and requesting that additional, stronger language around codes be added to the policy. FEMA received many suggestions to call out additional codes in the policy, such as plumbing, fire, mechanical, solar, hydronics and geothermal codes. The policy requires that a project must conform with the latest published editions (meaning either of the two most recently published editions) of relevant consensus-based codes, specifications, and standards, even if the State, Indian Tribal government, or community the project is located in has not adopted the required code(s). A State or Indian Tribal government does not need to have adopted current codes to be an eligible applicant. A project can always go beyond the minimum requirements, and States are encouraged to require subapplicants to meet stronger codes. As there are a plethora of codes that exist, and BRIC is a multi-hazard program, FEMA intentionally did not list all applicable codes for all the different project types. FEMA is in strong support of modern, disaster-resistant codes and encourages projects to implement the most recent codes applicable. The NOFO and program support materials will provide additional information.

Scoring Criteria. Many commenters provided recommendations for project attributes to score higher in FEMA review of projects. The following suggestions were the most frequently requested to receive a higher score: States or Indian Tribal governments with approved enhanced mitigation plans, small impoverished communities, historically disadvantaged communities, critical infrastructure, projects that utilize partnerships, use of best available climate science, communities on frontlines of climate threats, nature-based solution projects, and non-monetary benefits. There were also additional requests for other project attributes to receive higher scores. FEMA is taking these considerations into account as it develops the NOFO, particularly to the extent that the recommendations are consistent with the objectives of Executive Orders 14008,[18] 13990[19] and 13985. Scoring criteria are identified on an annual basis through the NOFO to allow the program to remain flexible and evolve over time.

Small Impoverished Communities

FEMA received 64 comments relating to small impoverished communities. These are summarized below with FEMA responses.

Ten Percent Cost Share. Commenters asked FEMA to eliminate the minimum ten percent non-Federal cost share requirement for small impoverished

[17] General Accounting Office Redbook, GAO–06–382SP, Vol. II (3rd ed. Feb. 2006), p. 10–93. *https://www.gao.gov/assets/210/202819.pdf.*

[18] E.O. 14008, *Tackling the Climate Crisis at Home and Abroad,* 86 FR 7619 (Jan. 27, 2021).

[19] E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,* 86 FR 7037 (Jan. 20, 2021).

communities, noting that even a ten percent non-Federal cost share can serve as an impediment to funding. FEMA understands these concerns, but pursuant to 42 U.S.C. 5133(h)(2) FEMA's contribution is limited to 90 percent of project costs. Contributions of cash, third-party in-kind services, materials, or any combination thereof, may be accepted as part of the non-Federal cost share.

Eligible Communities. FEMA received requests to allow more types of communities, such as States and Tribes with enhanced mitigation plans, to be eligible for a 90 percent Federal cost share. Pursuant to 42 U.S.C. 5133(h)(2), however, FEMA may contribute up to 90 percent only to small impoverished communities. Otherwise, the maximum cost share authorized is 75 percent per 42 U.S.C. 5133(h)(1).

Meeting the Needs of Small Impoverished Communities. Commenters requested that more be done to respond to the needs of small impoverished communities beyond the increased allowable Federal cost share. FEMA appreciates this concern and has removed the unemployment metric from ''small impoverished communities'' to be more inclusive and is also taking all comments into consideration as it develops the scoring criteria in the NOFO, technical assistance and program support materials.

Benefit Cost Analysis (BCA) process. Commenters noted the BCA process makes it more difficult for smaller, less densely populated communities to show cost effectiveness compared to urban communities. FEMA notes that 42 U.S.C. 5133(f) requires all financial assistance awarded on a competitive basis for BRIC to be used for mitigation activities that are cost effective. FEMA is evaluating ways to better capture the value of critical facilities, including specific implications for small impoverished communities.

Funding

FEMA received 135 comments relating to funding. These are summarized below with FEMA responses.

DRRA Funding Requirements. Commenters expressed concerns about the methodology of determining the amount of funding available for the BRIC program annually. Commenters thought the phrasing that FEMA ''may'' set aside 6 percent indicates uncertainty as to the amount of funding available. FEMA notes the funding source and related provisions, including the 6 percent set aside, and the 180-day requirement to estimate the aggregate amount of grants following major disasters, are set forth at 42 U.S.C. 5133. FEMA is required to perform the 6 percent calculation within 180 days of the disaster and is authorized to set it aside to fund the BRIC program. Funding amounts will be announced in the NOFO for each grant cycle.

Competitiveness. Commenters requested clarification and changes to the competitive and non-competitive aspects of the BRIC program. FEMA offers the following clarifications:

- State and territory allocations (set asides) are non-competitive.
- The Tribal set aside is non-competitive, unless the submitted applications exceed the allocated amount.
- The remaining funding will be competitive at the national level for mitigation projects.

Commenters also asked for BRIC funding to be structured as a block grant or revolving loan fund (RLF) program. FEMA notes that the BRIC program is statutorily defined as a categorical project-based grant program, which does not allow for a block grant or RLF structure. Additionally, 42 U.S.C. 5133(f) requires that the majority of the funding be awarded competitively.

Other Funding Clarifications. Commenters asked for clarity about cost share and management costs. FEMA offers the following clarifications:

- The policy permits applicant and third party in-kind contributions.
- Private funding is eligible for the non-Federal cost share. More information about the cost share will be provided in the NOFO.

Additionally, FEMA agrees with commenters requesting support for management costs and has changed the policy to provide 100 percent Federal funding for management costs. This approach is also consistent with FEMA's Hazard Mitigation Grant Program (HMGP).

Benefit Cost Analysis

FEMA received 49 comments relating to benefit-cost analysis (BCA). These are summarized below with FEMA responses.

Discount Rate. Commenters inquired about the discount rate of 7.0 percent used for BCA for HMA grant programs. They believe the Office of Management and Budget (OMB) Circular No. A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'' (rev. October 29, 1992) [20] is ''outdated'' and discount rates listed in the circular do not accurately reflect current economic conditions nor do they address the non-stationarity of changing natural hazard conditions that many BRIC projects will likely address. Pre-disaster hazard mitigation measures must be cost-effective under 42 U.S.C. 5133(b). OMB Circular A–94 applies to Federal programs and sets the requirements for conducting benefit-cost and cost-effectiveness analyses. FEMA cannot revise OMB Circular A–94 and is required to follow it. Thus, FEMA declines to make any changes to the policy based on these comments. Commenters who believe OMB Circular A–94 is outdated should reach out directly to OMB.

Changing Frequency and Magnitude of Future Natural Hazard Events. Commenters indicated that accounting for non-stationarity of future natural hazard events, including the impacts of the climate crisis, will be necessary and should be mandatory, and inquired how to account for changing frequency and magnitude of natural hazard events over the life of a project in a benefit-cost analysis. While FEMA's BCA tool does have a sea level rise component, the commenters stated the current tool does not account for changes in precipitation, stream flow, snow melt, or severe storm frequency. FEMA appreciates the comment. In order to bolster resilience to the impacts of climate change, FEMA is currently looking into how to incorporate the full range of benefits that address changing hazard risk and mitigate the risk of climate change into its hazard mitigation project BCAs. For example, FEMA is working with National Oceanic and Atmospheric Administration (NOAA) and U.S. Army Corps of Engineers (USACE) to leverage their research into the quantification of benefits from nature-based solutions and green infrastructure which will help FEMA fund these project types. If the jurisdiction or community has studies or other information from authoritative sources that model future risks, that information can be incorporated into the BCA by the applicant or subapplicant. The data used to adjust the default data in the BCA tool must be provided to FEMA to ensure that the data source is reliable and that the adjustment to the default data was correct and meets the requirements of OMB Circular A–94.

Streamlining the BCA Process. Commenters inquired about opportunities to streamline the benefit-cost analysis process. They find the current process to be quite challenging, particularly the amount of time and effort to assemble the backup documentation. Many subapplicants have limited staff and do not have the resources available to compile this

[20] *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a094/a094.html.*

documentation. Commenters suggested various solutions, including using other Federal agencies' BCA tools, conducting analyses at the neighborhood or watershed scale, accepting reasonable assumptions by applicants and subapplicants, and allowing small impoverished communities to have projects with benefit-cost ratios less than 1.0. FEMA appreciates the concern and allows the use of alternate BCA tools. At the same time, FEMA must approve the use of such tools in writing prior to the applicant/subapplicant submitting the grant application. FEMA intends to make this process as simple as possible. Applicants and subapplicants are allowed to use reasonable assumptions and supporting data in applications. FEMA is required to comply with the requirements of OMB Circular A–94 to demonstrate cost-effectiveness.

Pre-Calculated Benefits. FEMA received multiple inquiries about pre-calculated benefits. Commenters asked when updates to currently used standard values will occur to reflect current market conditions and if adjustment factors can be applied to reflect differences in local market conditions. They also inquired about developing pre-calculated environmental, social, and cultural benefits and/or incorporating these elements into existing pre-calculated benefits. Lastly, some comments about generators and flood risk reduction projects requested more pre-calculated benefits related to these types of projects. FEMA is constantly working to improve the BCA process, including regularly updating current values and developing additional pre-calculated benefits. FEMA does allow applicants and subapplicants to adjust pre-calculated benefit amounts using the most current locality multipliers included in industry accepted construction cost guides. If a multiplier is used, a copy of the source document must be included as part of the grant application. FEMA already has developed some pre-calculated ecosystem services benefits. Their use previously was restricted to specific project types but now can be applied more broadly.

Co-Benefits. In addition to ecosystem and environmental benefits, commenters want to be able to include other co-benefits in their BCAs. These co-benefits generally center around disadvantaged communities; cultural, historic, and sacred sites; and subsistence-related resources and activities. Some of these types of benefits are not easily quantified and captured in a traditional BCA. Even if they cannot be quantified, they can and should be mentioned as relevant benefits. (OMB Circular A–4, and OMB's Regulatory Impact Analysis: A Primer, contains helpful guidance on how to deal with benefits that are difficult or impossible to quantify.) FEMA recognizes that culturally significant resources are unique, and allows the applicant or subapplicant to refer to cultural, historic, and sacred resources, and to the extent feasible, to assign a monetary value to them. Established methods may be available to allow such assignments. See George Alexandrakis et al., Economic and Societal Impacts on Cultural Heritage Sites, Resulting from Natural Effects and Climate Change, 2 Heritage 279 (2019). The applicant or subapplicant must provide documentation from reliable sources that substantiates how the value of the resource was determined. FEMA encourages applicants and subapplicants to include additional relevant information in their project narrative, such as those associated with co-benefits that may not be easily quantified, to provide FEMA with a more comprehensive understanding of the project that could help to inform award decisions. This approach is consistent with Executive Order 13563, which recognizes that some costs may not be quantifiable, and also Executive Order 13990, which acknowledges that ''accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.'' [21]

Grant Administration and Management

FEMA received 86 comments relating to grant administration and management. These are summarized below with FEMA responses.

Period of Performance. FEMA received comments to clarify the period of performance (POP). Commenters requested a longer POP than the 36 months currently defined. FEMA changed the policy to clarify when the start of the POP occurs and when a longer POP may be requested. The beginning of the POP remains linked to the date of Federal award. FEMA removed the reference to ''highly complex projects'' in the policy to allow broader flexibility for FEMA to grant a longer POP on a case-by-case basis.

Monitoring. Commenters asked if FEMA will be monitoring the BRIC program and projects. FEMA will monitor as required by 2 CFR part 200 and will be stated in the NOFO. FEMA continuously assesses processes and the success of its programs to identify opportunities for improvement.

[21] E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,* 86 FR 7037 (Jan. 20, 2021).

III. Final Policy

FEMA is finalizing the policy as follows. Line numbers refer to numbering from the final policy.

- In response to concerns of small communities that public infrastructure size will differ for differently sized communities, FEMA removed ''large-scale'' before ''public infrastructure'' in line 42.
- In lines 46–48, FEMA added the following principle: ''Promote equity, including by helping members of disadvantaged groups and prioritizing 40 percent of the benefits to disadvantaged communities as referenced in Executive Order (E.O.) 14008 in line with the Administration's Justice40 Initiative.''
- To address requests from commenters to support consideration of future conditions, FEMA edited lines 49–53 to read: ''Support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, taking into account future conditions, prominently including the effects of climate change, and have long-lasting impacts on community risk-reduction, including for critical services and facilities and for future disaster costs.''
- In lines 107–108, FEMA added: ''FEMA may identify additional criteria in the annual NOFO to allocate available funding.''
- To address requests from commenters to support management costs, FEMA added a new sub-bullet in line 113: ''FEMA will provide 100 percent Federal funding for management costs.''
- For commenters who noted that the Funding section has numerous references to eligible entities and applicants that would be better understood if the eligibility section came before it, FEMA reordered the ''Requirements'' section so that ''Applicant and Subapplicant Eligibility'' comes before ''Funding'' in lines 54 to 128.
- To address comments asking for clarification of eligibility for different types of entities:
  - FEMA added ''Federally recognized'' to predicate ''Indian Tribal governments'' in line 61 in order to clarify that the Tribal-set aside is limited to federally-recognized Tribes.
  - FEMA added ''Individuals, businesses, and non-profit organizations

are not eligible to apply for HMA funds; however, an eligible Applicant or subapplicant may apply for funding on behalf of individuals, businesses, and non-profit organizations'' to lines 69 to 72. This text clarifies how individual homeowners and businesses may receive further assistance.

• To address commenters' requests to clarify that updates to mitigation plans are eligible for capability- and capacity-building funds, FEMA edited line 138 to read: ''. . . develop or update mitigation priorities and plans.''

• To address commenters' request for a sentence structure edit in lines 1596 to 162, FEMA reordered the sentence to end with the citation in order to emphasize that the requirement is to comply with environmental and historic preservation regulations.

• To address commenters' request for a sentence structure edit in lines 163 to 164, FEMA reordered the sentence to end with the citation in order to clarify the intent is to require compliance with floodplain and other applicable land use laws and regulations.

• In lines 165–166, FEMA added: ''Any FEMA directive or policy implementing the Federal Flood Risk Management Standard (FFRMS).''

• For commenters who asked FEMA to define the term ''non-construction,'' FEMA intended to mean capability- and capacity-building activities. FEMA replaced the term ''non-construction'' with ''Capability- and capacity-building activities,'' and moved the sentence to line 174. FEMA also added on lines 178–179 the sentence, ''Already initiated or completed capability- and capacity-building activities are not eligible for funding.'' FEMA also added a new sentence on lines 194–195 to completely address limits on eligibility: ''Projects for which ground disturbance has already been initiated or completed are not eligible for funding.''

• For editorial purposes, FEMA edited lines 196–199 to read: ''It must be cost-effective and designed to increase resilience and reduce risk of injuries, loss of life, and damage and destruction of property, including critical services and facilities.''

• In line 202, FEMA removed the phrase: ''. . . through completion of a benefit cost analysis conducted in compliance with OMB Circular A–94.''

• To address commenters' requests, lines 207–211 were edited to clarify that if a project is located in the Special Flood Hazard Area (SFHA), the jurisdiction in which the project is located must be participating in the National Flood Insurance Program (NFIP) and not on probation, suspension, or withdrawn. FEMA also added in lines 215–218 the following clarification: ''If there is a transfer of ownership of the structure, the requirement of obtaining and maintaining flood insurance for the life of the structure applies to the new owner and any successive owners.''

• In lines 219–220, FEMA added, ''The project must comply with any FEMA directive or policy implementing the Federal Flood Risk Management Standard (FFRMS).''

• In response to commenters' notes to clarify that eligible pre-award costs should be limited to development of the mitigation application, FEMA edited line 234 to add the words ''the application for'' after the words ''the development of.''

• In order to address commenters' requests to clarify the POP, and requests to allow for a longer POP, FEMA edited text in lines 249 to 253. FEMA deleted ''effective'' and ''generally'' as the beginning of the POP remains linked to the date of Federal award. FEMA also deleted ''for highly complex projects'' and changed language on lines 250–252 to: ''The applicant may submit a request for a longer POP in the application for FEMA to review and approve.'' This change gives FEMA broader flexibility to grant a request for a longer POP.

• In answer to commenters' questions, FEMA edited lines 312 to 313 to confirm that the policy will remain intact after it is incorporated into guidance. FEMA deleted the following language: ''at which point this policy will be superseded.''

• To add clarity, FEMA added subsections titled ''Definitions'' and ''Monitoring and Evaluation'' to the Additional Information section.

• FEMA also made minor, nonsubstantive corrections for grammar and clarity. FEMA is now issuing the final BRIC policy, which is available at *http://www.regulations.gov* and on the FEMA website at *https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities.* The final policy will not have the force and effect of law and is not meant to bind the public in any way. The guidance document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Under the Congressional Review of Agency Rulemaking Act (CRA), before guidance can take effect, the Federal agency promulgating the guidance must submit to Congress and to the Government Accountability Office (GAO) a copy of the guidance; a concise general statement describing the guidance, including whether it is ''major'' within the meaning of the CRA; and the proposed effective date of the guidance.[22] A ''major'' guidance document is one that has an annual effect on the economy of $100,000,000 or more; results in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Pursuant to the CRA, the Office of Information and Regulatory Affairs designated this guidance as ''major'' within the meaning of the CRA as defined by 5 U.S.C. 804(2), as the annual effect on the economy will be over $100,000,000 in transfers. As such FEMA has sent the final BRIC policy to the Congress and to GAO.

Authority: Sec. 1234, Pub. L. 115–254, 132 Stat. 3438.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–04041 Filed 2–24–22; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0010; OMB No. 1660–0076]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Mitigation Grant Program (HMGP) Application Reporting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork

[22] *See* 5 U.S.C. 801–808. Although the statutory language only discusses rules, Congress has made it clear that the CRA covers guidance documents as well. *See, e.g.,* ''The Congressional Review Act (CRA): Frequently Asked Questions,'' Congressional Research Service, at 7 (Jan. 14, 2020), *available at https://crsreports.congress.gov/product/pdf/R/R43992* (last accessed Aug. 31, 2020).

Reduction Act of 1995, this notice seeks comments regarding the requirements, grants management procedures, and implementation of grants awarded under the Hazard Mitigation Grant Program (HMGP), which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster.

DATES: Comments must be submitted on or before April 26, 2022.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0010. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and 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 read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Chief, HMA Grants Policy Branch, at (202) 212–4071 or *jennie.orenstein@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, established the Hazard Mitigation Grant Program (HMGP). Grant requirements and grants management procedures of the program are outlined in 44 CFR part 206 Subpart N, and 2 CFR parts 200 and 3002. The Federal Emergency Management Agency (FEMA) administers the HMGP, and Recipients implement the grants under the HMPG per grant agreement and rules and regulations. The HMGP is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. Section 102 of the Stafford Act, 42 U.S.C. 5122(4), defines a ''state'' as any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the Northern Mariana Islands. ''Recipient'', as provided in 2 CFR 200, means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program, or an Indian tribal government that chooses to act as a recipient rather than as a subrecipient. ''Subrecipient'' refers to a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. The term ''Indian tribal government'' is defined in Section 102 of the Stafford Act, 42 U.S.C. 5122(6), as the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994. In addition, the Sandy Recovery Improvement Act of 2013 (Pub. L. 113–2) amended the Stafford Act to allow the Chief Executive of a federally recognized Indian tribe to make a direct request to the President of the United States for a major disaster or emergency declaration codified under 42 U.S.C. 5170(b).''

Collection of Information

Title: Hazard Mitigation Grant Program (HMGP) Application and Reporting.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: OMB No. 1660–0076.

FEMA Forms: FEMA Form FF–206–FY–22–154 (formerly 009–0–111A), Quarterly Progress Reports.

Abstract: FEMA administers the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitor grantee project activities and expenditure of funds.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 236.

Estimated Number of Responses: 3,280.

Estimated Total Annual Burden Hours: 38,124.

Estimated Total Annual Respondent Cost: $2,295,447.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $1,953,915

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Maile Arthur,

Deputy Director, Information Management Division, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–04056 Filed 2–24–22; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–04]

60-Day Notice of Proposed Information Collection: Supplement to Application for Federally Assisted Housing; OMB Control No.: 2502–0581

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:* April 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, 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. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

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: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502–0581.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD Form 92006.

Description of the need for the information and proposed use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any the delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Respondents: The respondents are individuals or families who are new admissions in the covered programs.

Estimated Number of Respondents: 302,770.

Estimated Number of Responses: 302,770.

Frequency of Response: Each individual or family only responds once unless they wish to update their information.

Average Hours per Response: 0.25 hours.

Total Estimated Burden: 75,693.

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.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–04029 Filed 2–24–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–03]

60-Day Notice of Proposed Information Collection: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-To-Market); OMB Control No.: 2502–0533

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:* April 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, 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. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

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: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market).

OMB Approval Number: 2502–0533.

Type of Request: Extension of currently approved collection.

Form Numbers: HUD–9624, HUD–9625, OPG 3.1, OPG 3.2, OPG 3.3, OPG 3.4, OPG 4.1, OPG 4.2, OPG 4.3, OPG 4.4, OPG 4.7, OPG 4.8, OPG 4.10, OPG 4.11, OPG 4.12, OPG 5.4, OPG 5.5, OPG 6.5, OPG 7.4, OPG 7.6, OPG 7.8, OPG 7.11, OPG 7.12, OPG 7.13, OPG 7.14, OPG 7.16, OPG 7.21, OPG 7.22, OPG 7.23, OPG 7.25, OPG 9.10, OPG 9.11, OPG 11.1. In addition, the Post Mark-to-Market documents pending approval: (1) Accommodation Agreement Debt Assignment-TPA Post Restructuring, (2) Assumption Modification of Use Agreement, (3) Attachment 1: Assumption Modification Use Agreement—Term Extension—No M2M Debt and Not QNP, (4) Attachment 2: Subordinate Agreement—New Financing to M2M, (5) Attachment 3: Assuming of Use Agreement No Term Extension, (6) Attachment 4: Attachment 4—Modification of Use Agreement (Term Extension—Not QNP), (7) Attachment 5: Subordinate Agreement-New and Existing Financing to M2M Use Agreement, and (8) Release, Assumption and Modification of Accommodation Agreement.

Description of the need for the information and proposed use: The Mark-to-Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997, as modified and extended from time to time, including by the Market-to-Market Extension Act of 2001. The information collection is required and will be used to determine the eligibility of FHA-insured or formerly insured multifamily properties for participation in the Mark-to-Market Program and the terms on which such participation should occur as well as to process eligible properties from acceptance into the program through closing of the mortgage restructure in accordance with program guidelines. The result of participation in the program is the refinancing and restructure of the property's FHA-insured mortgage and, generally the reduction of Section 8 rent payments and establishment of adequately funded accounts to fund required repair and rehabilitation of the property.

Respondents: Contractors and Tenants.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 1,346.

Frequency of Response: On occasion.

Average Hours per Response: 32.

Total Estimated Burdens: 1,912.

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.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–03988 Filed 2–24–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0017; FXES11130400000–223–FF04EM1000]

Safe Harbor Agreement and Enhancement of the Survival Permit for the Gopher Tortoise and Red-Cockaded Woodpecker, Covington County, MS; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received a written request from Dr. John S. Lambert (applicant) to renew an enhancement of survival permit TE 075424 (permit) for an existing safe harbor agreement (SHA) without change. The Service is making the proposed permit renewal, which includes the applicant's proposed updated SHA as well as the Service's draft environmental action statement (EAS), available for public review and comment.

DATES: We must receive your written comments on or before March 28, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0017 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0017.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0017; U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: John Tupy, by telephone at 601–321–1133, or via email at *john_tupy@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received a written request from John S. Lambert (applicant) to renew an existing enhancement of survival permit (TE 075424) (permit) for an additional 20 years beyond its current expiration date. The Service and the applicant have mutually agreed that no changes or amendments would be made to the safe harbor agreement (SHA). The existing permit associated with the SHA was issued on May 27, 2005, under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and is in effect until December 31, 2025. Renewing the SHA is intended to benefit the recovery of the federally listed threatened gopher tortoise (*Gopherus polyphemus*) and federally listed endangered red-cockaded woodpecker (*Picoides borealis*) on 754 acres (ac) of enrolled privately owned lands in Covington County, Mississippi. The Service is making the applicant's proposed updated SHA (October 1, 2021) and the Service's draft environmental action statement (EAS) available for public review and

comment. The draft EAS supports the Service's preliminary determination that the proposed permit renewal is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife through annoyance to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are at 50 CFR 17.32.

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs and the subsequent permits issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA encourage private and other non-Federal property owners to implement conservation actions for federally listed species. In exchange for voluntarily undertaking management activities, the landowners are assured that they will not be subjected to increased property-use restrictions resulting from their efforts to either attract listed species to their property or to increase the numbers or distribution of listed species already on their property. Landowners may make lawful use of their enrolled property during the permit term and may incidentally take the listed species named on the permit. Application requirements and issuance criteria for permits associated with SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). As provided for in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), safe harbor agreements provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species, to such an extent that the property is returned back to the originally agreed-upon baseline conditions. Private landowners may voluntarily terminate a safe harbor agreement at any time and in accordance with 50 CFR 13.26. If this occurs, landowners must relinquish the associated enhancement of survival permit pursuant to section 10(a)(1)(A) of the ESA.

Safe Harbor Agreement

The private lands owned by the applicant and enrolled under the existing SHA and valid permit consist of 754 ac known as the Martin Branch Woodlands, in Covington County, Mississippi. The baseline established in 2005 was 57.3 ac of occupied gopher tortoise habitat and 0 ac of occupied red-cockaded woodpecker habitat. Martin Branch Woodlands has been managed and enhanced above baseline since entering the SHA. The renewal of the SHA contains no changes or amendments to the SHA. Under the SHA, the applicant will continue to undertake the following habitat maintenance and enhancement actions intended to benefit the gopher tortoise on the enrolled property: (1) Avoid planting or regenerating pine trees in dense stands with more than 400 surviving seedlings per acre; (2) mark burrows prior to the operation of vehicular mechanical equipment used to thin and harvest timber for habitat restoration; and (3) avoid running over tortoises or collapsing burrows and burying tortoises with heavy equipment during timber harvest and related activities.

The applicant's voluntary forest and habitat management plan for the enrolled property will restore, enhance, and increase habitat for the gopher tortoise in all pine uplands with soils suitable for the species on about 480 ac. Three basic habitat conditions or measures will be attained by this plan: (1) Maintenance of basal areas at or below 70 ft^2/ac; (2) application of frequent prescribed fire; and (3) restoration of longleaf pine. The applicant will maintain and restore suitable nesting and foraging habitat for at least one group of red-cockaded woodpecker on the property. Currently, no red-cockaded woodpeckers inhabit the property.

The landowner has met the requirements set forth in the SHA and is currently in compliance with the conditions set forth in the permit. All monitoring and reporting are up to date.

Under comment and review is the request to renew the existing valid permit associated with the SHA that was issued May 27, 2005, under ESA, and is in effect until December 31, 2025. The applicant is requesting to extend the permit period for an additional 20 years beyond its current expiration date.

National Environmental Policy Act Compliance

The renewal of the permit is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit renewal is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources that would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations at 40 CFR 1506.6 and 43 CFR 46.305.

James Austin,

Acting Field Supervisor, Mississippi Field Office, South Atlantic-Gulf & Mississippi-Basin Regions.

[FR Doc. 2022–04018 Filed 2–24–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0134]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Student Transportation Form

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0134 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jake Coury, Program Analyst, telephone: (505) 239–9068. 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, 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 18, 2021 (86 FR 57686). We received one comment in response to that notice.

Comment 1: The respondent supported the information collection, stating in their opinion that the information collection is necessary to determine the allocation of transportation funds and meet the transportation needs of American Indian students in the state of Wisconsin; and helpful for American Indian students served by Bureau-funded schools.

Agency Response to Comment 1: The Bureau greatly appreciates the support of our partners who both use the ISEP transportation program as well as other external partners in support of our data collection practices to most efficiently distribute the funds appropriated by Congress under the ISEP Transportation program. We are continuously working to improve our processes and are currently in the process of updating our WebET system and administration of the system so that as a Bureau we continue working to fulfill the goals of the GPEA.

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 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 BIE is requesting renewal of OMB approval for the Student Transportation Form. The Student Transportation regulations in 25 CFR part 39, subpart G, contain the program eligibility and criteria that govern the allocation of transportation funds. Information collected from the schools will be used to determine the rate per mile. The information collection provides transportation mileage for Bureau-funded schools, which determines the allocation of transportation funds. This information is collected using a web-based system, Web Education Transportation (Web ET).

Title of Collection: Student Transportation Form.

OMB Control Number: 1076–0134.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contract and Grant schools; Bureau-operated schools.

Total Estimated Number of Annual Respondents: 183 per year, on average.

Total Estimated Number of Annual Responses: 183 per year, on average.

Estimated Completion Time per Response: Two hours.

Total Estimated Number of Annual Burden Hours: 366 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–04051 Filed 2–24–22; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1302]

Certain Cellular Base Station Communication Equipment, Components Thereof, and Products Containing Same; Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 19, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Apple Inc. of Cupertino, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular base station communication equipment, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,882,282 (''the '282 patent''); U.S. Patent No. 10,263,340 (''the '340 patent''); and U.S. Patent 9,667,290 (''the '290 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 18, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 11, and 12 of the '282 patent; claims 1–4, 6–10, 18, 19, and 21 of the '340 patent; and claims 1–6, 13, and 14 of the '290 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''cellular base station communication equipment, specifically mmWave antenna radio units and radio baseband units, components thereof, and products containing same'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Apple Inc., One Apple Park Way, Cupertino, CA 95014.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Ericsson AB, Torshamnsgatan 23, Kista, 16480 Stockholm, Sweden.

Telefonaktiebolaget LM Ericsson, Torshamnsgatan 21, Kista, SE–164 83, Stockholm, Sweden.

Ericsson Inc., 6300 Legacy Drive, Plano, TX 75024.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a/the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 18, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–03957 Filed 2–24–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–966]

Bulk Manufacturer of Controlled Substances Application: S&B Pharma LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: S&B Pharma LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 26, 2022. Such persons may also file a written request for a hearing on the application on or before April 26, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 24, 2021, S&B Pharma LLC, 405 South Motor Avenue, Azusa, California 91702, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
4-Anilino-N-Phenethyl-4-Piperidine (ANPP).	8333	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates for formulation and analytical development purposes or for sale to its customers. In reference to dug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04062 Filed 2–24–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–974]

Bulk Manufacturer of Controlled Substances Application: Cedarburg Pharmaceuticals

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cedarburg Pharmaceuticals has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 26, 2022. Such persons may also file a written request for a hearing on the application on or before April 26, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *http://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 27, 2021, Cedarburg Pharmaceuticals, 870 Badger Circle, Grafton, Wisconsin 53024–0000, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic Acid Diethylamide.	7315	I
Tetrahydrocannabinols	7370	I
4-Bromo-2,5-Dimethoxyphenethylamine.	7392	I
3,4-Methylenediocyamphetamine.	7400	I
3.4-Methylenedioxymethamphetamine.	7405	I
5-Methoxy-N-N-dimethltryptamine.	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Methylphenidate	1724	II
Nabilone	7379	II
4-Anilino-N-Phenethyl-4-Piperidine (ANPP).	8333	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates or for sale to its customers. In reference to the drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture as synthetic. No other activity for this drug code is authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04064 Filed 2–24–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–964]

Bulk Manufacturer of Controlled Substances Application: Synthcon LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Synthcon LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 26, 2022. Such persons may also file a written request for a hearing on the application on or before April 26, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 2, 2021,

Synthcon LLC, 770 Wooten Road, Suite 101, Colorado Springs, Colorado 80915–3538, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-FMC	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-FMC	1238	I
Pentedrone	1246	I
Mephedrone(4-Methyl-N-methylcathinone)	1248	I
4-MEC	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Aminorex	1585	I
Cis-4-Methylaminorex	1590	I
GHB	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250	6250	I
ADB-PINACA	7035	I
JWH-018	7118	I
JWH-073	7173	I
JWH-200	7200	I
JWH-203	7203	I
4-Methyl-alpha-ethylaminopentiophenone	7245	I
N-Ethyhexedrone	7246	I
AET	7249	I
Ibogaine	7260	I
CP-47,497	7297	I
CP-47,497 C8 HOMOLOG	7298	I
LSD	7315	I
2C-T-7	7348	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
2C-T-2	7385	I
3,4,5-TMA	7390	I
DOB	7391	I
2CB	7392	I
DOM	7395	I
2,5-DMA	7396	I
JWH-398	7398	I
DOE	7399	I
MDA	7400	I
5-METHOXY-MDA	7401	I
N-HYDROXY-MDA	7402	I
MDEA	7404	I
MDMA	7405	I
PMA	7411	I
5-MeO-DMT	7431	I
AMT	7432	I
Bufotenine	7433	I
DET	7434	I
DMT	7435	I
Psilocybin	7437	I
Psilocin	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-Methyl-alpha-pyrrolidinohexiophenone	7446	I
PCE	7455	I
PCPy	7458	I
TCP	7470	I
TCPy	7473	I
JB323	7482	I
JB336	7484	I
BZP	7493	I
4-MePPP	7498	I
2C-D	7508	I
2C-E	7509	I
2C-H	7517	I
2C-I	7518	I
2C-C	7519	I
2C-N	7521	I
2C-P	7524	I
2C-T-4	7532	I

Controlled substance	Drug code	Schedule
MDPV	7535	I
25B-NBOME	7536	I
25C-NBOME	7537	I
25I-NBOME	7538	I
Methylone	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethylpentyloe	7543	I
Alpha-Pyrrolidinohexanophenone	7544	I
Alpha-PVP	7545	I
Alpha-PBP	7546	I
Ethylone	7547	I
AM-694	7694	I
Etorphine	9056	I
Heroin	9200	I
Normorphine	9313	I
Acetorphine	9319	I
U-47700	9547	I
AH-7921	9551	I
MT-45	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Clonitazine	9612	I
Isontonitazene	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimethylthiambutene	9619	I
Etonitazene	9624	I
Ketobemidone	9628	I
MPPP	9661	I
PEPAP	9663	I
Tilidine	9750	I
Acryl Fentanyl	9811	I
Para-fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
Ortho-fluorofentanyl	9816	I
Acetylfentanyl	9821	I
Butyrylfentanyl	9822	I
Para-fluorofentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
Methoxyacetyl fentanyl	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyrylfentanyl	9827	I
Beta-Hydroxyfentanyl	9830	I
Beta-Hydroxy-3-methylfentanyl	9831	I
Alpha-Methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanylfentanyl	9834	I
Thiofentanyl	9835	I
Beta-Hydroxythiofentanyl	9836	I
Para-Methoxybutyryl Fetnanyl	9837	I
Ocfentanil	9838	I
Valeryl Fentanyl	9840	I
Tetrahydrofuranyl Fentanyl	9843	I
Crotonyl Fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
Cyclopentyl Fentanyl	9847	I
Fentanyl Related Compounds	9850	I
Amphetamine	1100	II
Methamphetamine	1105	II
1-Phenylcyclohexylamine	7460	II
PCP	7471	II
ANPP	8333	II
Norfentanyl	8366	II
P2P	8501	II
PCC	8603	II
Alphaprodine	9010	II

Controlled substance	Drug code	Schedule
Anileridine	9020	II
Cocaine	9041	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Levorphanol	9220	II
Meperidine	9230	II
Meperidine Intermediate-A	9232	II
Meperidine Intermediate-B	9233	II
Meperidine Intermediate-C	9234	II
Dextropropoxyphene	9273	II
Morphine	9300	II
Levo-alphacetylmethadol	9648	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances as analytical materials, proficiency test materials, and academic research materials for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04057 Filed 2–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–965]

Importer of Controlled Substances Application: Lyndra Therapeutics

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Lyndra Therapeutics has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 28, 2022. Such persons may also file a written request for a hearing on the application on or before March 28, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 13, 2022, Lyndra Therapeutics, 65 Grove Street, Suite 301, Watertown, Massachusetts 02472, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methadone	9250	II

The company plans to develop the formulation and process, and then manufacture the finished oral dosage form for use in preclinical and human clinical trials and analysis. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04061 Filed 2–24–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Miner's Claim for Benefits and Employment History

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 March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Black Lung Benefits Act (BLBA), (30 U.S.C. 901 *et seq.*) provides benefits to coal miners who are totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of miners. CM–911 is the standard application form filed by the miner for benefits under the Black Lung Benefits Act. The applicant lists the coal miner's work history on the CM–911a. This form is completed by all applicants, both miners and survivors. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 7, 2021 (86 FR 55862).

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: Miner's Claim for Benefits Under the Black Lung Benefits Act and Employment History.

OMB Control Number: 1240–0038.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 4,900.

Total Estimated Number of Responses: 9,800.

Total Estimated Annual Time Burden: 6,942 hours.

Total Estimated Annual Other Costs Burden: $1,818.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: February 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–03983 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Resource Justification Model

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is authorized by Section 303(a)(6) of the Social Security Act. The purpose of this Information Collection Request is for state agencies to electronically submit detailed cost data in a structured format. The information specifies salary and benefit rates, workloads, processing times, and non-personal services dollars, which are used to inform ETA's administrative funding allocation process. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 8, 2021 (86 FR 36162).

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–ETA.

Title of Collection: Resource Justification Model.

OMB Control Number: 1205–0430.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 159.

Total Estimated Annual Time Burden: 5,380 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: February 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–03981 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance (UI) Advances and Voluntary Repayment Process

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Sections 1201 and 1202(a) of the SSA authorize this information collection. Section 1201 of the Social Security Act (SSA) provides for advances to states from the Federal Unemployment Account (FUA). The law further sets out specific requirements to be met by a state requesting an advance. The purpose of this Information Collection Request is to maintain a process for state governors for requesting advances and repaying advances through their correspondence with the Secretary of Labor. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 23, 2021 (86 FR 39079).

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–ETA.

Title of Collection: Unemployment Insurance (UI) Title XII Advances and Voluntary Repayment Process.

OMB Control Number: 1205–0199.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 19.

Total Estimated Number of Responses: 57.

Total Estimated Annual Time Burden: 57 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: February 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–03980 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Meeting of the President's Committee on the International Labor Organization

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, as amended), notice is hereby given of a meeting of the President's Committee on the International Labor Organization (ILO).

DATES: April 1, 2022; 2:00 p.m.; U.S. Department of Labor, Secretary's Conference Room, Room S–2508, 200 Constitution Avenue NW, Washington, DC. Should the situation with COVID–19 require it, alternative arrangements will be made.

FOR FURTHER INFORMATION CONTACT: Thea Mei Lee, Deputy Undersecretary, Bureau of International Labor Affairs, U.S. Department of Labor, (202) 693–4777, *Lee.Thea.M@dol.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Secretary of Labor will chair a meeting of the President's Committee on the International Labor Organization to review and discuss current issues relating to the United States' tripartite participation in the ILO. The discussion will involve information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. Accordingly, the meeting will be closed to the public, pursuant to Section 10(d) of the Federal Advisory Committee Act and the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

The President's Committee on the ILO consists of the Secretaries of Labor (chair), State and Commerce, the Assistants to the President for National Security Affairs and Economic Policy, and the Presidents of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the U.S. Council for International Business. Under its Charter, the Committee's objective is ''to formulate and coordinate United States policy towards the International Labor Organization in order to promote continued reform and progress in that organization.'' The Committee considers all matters relating to United States participation in the ILO.

Signed at Washington, DC, on February 17, 2022.

Martin J. Walsh,

Secretary of Labor.

[FR Doc. 2022–03984 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Compensation for Federal Employees Handbook 391

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8501, *et seq.* authorizes this information collection. Per the Unemployment Compensation for Federal Employees Act, ''[E]ach agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' DOL has prescribed forms to enable State Workforce Agencies to obtain this necessary information from the individual's Federal employing agency. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 29, 2021 (86 FR 40879).

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–ETA.

Title of Collection: Unemployment Compensation for Federal Employees Handbook 391.

OMB Control Number: 1205–0179.

Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Respondents: 1,410.

Total Estimated Number of Responses: 178,271.

Total Estimated Annual Time Burden: 13,313 hours.

Total Estimated Annual Other Costs Burden: $62,547.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: February 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–03979 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Title 30 CFR 56.3203(a), 57.3203(a), and 75.204(a) require: (1) That mine operators obtain a certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable ASTM specifications, and (2) that the manufacturer's certification is made available to an authorized representative of the Secretary. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 31, 2021 (86 FR 48768).

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–MSHA.

Title of Collection: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

OMB Control Number: 1219–0121.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 345.

Total Estimated Number of Responses: 43,558.

Total Estimated Annual Time Burden: 420 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–03982 Filed 2–24–22; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–014]

Centennial Challenges Watts on the Moon Challenge Phase 2

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges Watts on the Moon Challenge Phase 2.

SUMMARY: Phase 2 of the Watts on the Moon Challenge is open, and teams that wish to compete may now register. NASA seeks to stimulate research and technology solutions to support future missions and inspire new national aerospace capabilities through public prize competitions called Centennial Challenges. The Watts on the Moon Challenge is one such competition. Centennial Challenges are managed at NASA's Marshall Space Flight Center in Huntsville, Alabama and are part of the Prizes, Challenges, and Crowdsourcing program within NASA's Space Technology Mission Directorate at the agency's Headquarters in Washington. Phase 2 of the Watts on the Moon Challenge seeks to attract innovative engineering approaches to integrating power transmission and energy storage in order to enable missions operating in the extreme cold vacuum of the lunar surface. Phase 2 of the Watts on the Moon Challenge is a prize competition with a total prize purse of $4,500,000 USD, (four and a half million United States dollars) to be awarded to competitor teams that build and successfully demonstrate prototypes of novel technologies. Successful demonstrations from this challenge will complement ongoing NASA investments in lunar surface power generation. NASA is funding the prize purse and administration of the challenge competition. Any eligible individual or organization may participate in Phase 2. teams are not required to have participated in Phase 1.

DATES: Phase 2 registration opens February 23, 2022, and will remain open until June 15, 2022. No further requests for registration will be accepted after this date. Other important dates, including deadlines for key deliverables from the teams, are listed on the Challenge website: *www.nasa.gov/wattson.*

ADDRESSES: Phase 2 of the Watts on the Moon Challenge will be conducted virtually, with competitor teams developing and submitting their concept proposals and building their prototypes from their own locations. Eligible finalist will test their solutions at a NASA facility as described in the Official Rules document.

FOR FURTHER INFORMATION CONTACT: Questions and comments regarding the challenge should be addressed to Denise Morris, Centennial Challenges Deputy Program Manager, NASA Marshall Space Flight Center Huntsville, AL 35812. Phone number 256–544–3989 and Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.* For general information on NASA prize competitions, challenges, and crowdsourcing opportunities, please visit: *www.nasa.gov/solve.*

To register or for additional information regarding the Watts on the Moon Challenge, please visit: *www.nasa.gov/wattson.*

SUPPLEMENTARY INFORMATION: For Watts on the Moon Phase 2, NASA is seeking solutions that:

1. Draw power from an intermittent NASA power source and deliver power to a continuous NASA load bank;
2. Operate in simulated lunar temperatures and vacuum;
3. Operate continuously without any additional power generation;
4. Demonstrate a capability to deliver power over a distance of 3 km; and
5. Optimize total system mass and total system efficiency.

I. Prize Amounts

The Watts on the Moon Challenge Phase 2 total prize purse is $4,500,000 USD (four and a half million United States dollars) to be awarded across Phase 2 of this competition. There will be three (3) competition levels in Phase 2, with a prize award after each of the three (3) levels. The winners will be determined by a Judging Panel.

- Level 1—Up to seven (7) winning teams with a total prize purse of $1,400,000.
- Level 2—Up to four (4) winning teams with a total prize purse of 1,600,000.
- Level 3—Up to two (2) winning teams with a total prize purse of $1,500,000.

Teams must meet the eligibility requirements for the NASA prize in order to receive a prize from NASA.

II. Eligibility To Participate and Win Prize Money

To be eligible to win a prize, competitors must register and comply with all requirements in the Official Rules. Eligibility requirements include:

- Individuals must be U.S. citizens or permanent residents of the United States and be 18 years of age or older.
- Organizations must be an entity incorporated in and maintaining a primary place of business in the United States.
- Teams must be comprised of otherwise eligible individuals or organizations and led by an otherwise eligible individual or organization.

Interested teams should refer to the official Challenge website (*www.nasa.gov/wattson*) for full details on eligibility requirements and registration.

III. Official Rules

The complete official rules for the Watts on the Moon Challenge, can be found at: *https://www.herox.com/WattsOnTheMoon/guidelines.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2022–04010 Filed 2–23–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and one request for a copy of the information collection was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance

simultaneously with the publication of this second notice.

DATES: 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: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, 703–292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB Number: 3145–0194.

Type of Request: Intent to seek approval to extend an information collection.

Proposed Project

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 100 hours per center for twelve centers for a total of 1200 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the twelve centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 22, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–03974 Filed 2–24–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and one request for a copy of the information collection was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: 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: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, 703–292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Notification Requirements Regarding Sexual Harassment, Other Forms of Harassment, or Sexual Assault.

OMB Number: 3145–0249.

Type of Request: Renewal with change of an information collection.

Proposed Project: The primary purpose of this data collection is for institutional authorized organizational representatives to inform NSF of any finding/determination regarding the Principal Investigator (PI) or any co-PI that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or if the PI or any co-PI is placed on administrative leave or if any administrative action has been imposed on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

The awardee is required to notify NSF of: (1) Any finding/determination regarding the PI or any co-PI that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or (2) if the PI or any co-PI is placed on administrative leave or if any administrative action has been imposed on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. Such notification must be submitted by the Authorized Organizational Representative (AOR) or designee to NSF's Office of Equity and Civil Rights at: *https://www.nsf.gov/OD/OECR/notification_form.jsp* within ten business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner. Each notification must include the following information:

- NSF Award Number;
- Name of PI or co-PI being reported;
- *Type of Notification:* Select one of the following:

—Finding/Determination that the reported individual has been found to have violated awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; or

—Placement by the awardee of the reported individual on administrative leave or the imposition of any administrative action on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

- Description of the finding/determination and action(s) taken, if any; and
- Reason(s) for, and conditions of, placement of the PI or any co-PI on administrative leave or imposition of administrative action.

Use of the Information: NSF will use the information in consultation with the awardee to determine whether the NSF award activities can be carried out as proposed and in a manner that protects the safety and security of award personnel.

Burden on the Public: It has been estimated that respondents will expend an average of one hour to complete the form.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 22, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–03975 Filed 2–24–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0063]

Reassessment of NRC's Dollar per Person-Rem Conversion Factor Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1530, Revision 1, ''Reassessment of NRC's Dollar Per Person-Rem Conversion Factor Policy.'' This revision to NUREG–1530 updates the dollar per person-rem conversion factor and establishes a method for keeping this factor up-to-date. The NRC uses the dollar per person-rem conversion factor in cost-benefit analyses to determine the monetary valuation of the consequences associated with radiological exposure and establishes this factor by multiplying a value of a statistical life (VSL) coefficient by a cancer mortality risk coefficient.

DATES: NUREG–1530, Revison 1 is available on February 25, 2022.

ADDRESSES: Please refer to Docket ID NRC–2015–0063 when contacting the NRC about the availability if 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–2015–0063. Address questions about Docket IDs 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, 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:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pamela Noto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6795, email: *Pamela.Noto@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

Revision 1 to NUREG–1530 (ADAMS Accession No. ML22053A025) updates the dollar per person-rem conversion factor and establishes a method for keeping this factor up-to-date. The NRC applies the dollar per person-rem conversion factor from NUREG–1530 in a variety of regulatory applications that require the determination of the monetary valuation of the consequences associated with radiological exposure. This factor is established by multiplying a VSL coefficient by a nominal risk coefficient.

In 2009, the NRC staff initiated research on the bases for the determination of the VSL and performed outreach with other Federal agencies on their values and use. The VSL is not a value placed on human life, but a value that society would be willing to pay for reducing health risk. The concept of a VSL is used throughout the Federal government to monetize the health benefits of a safety regulation. Subsequently in 2011 the magnitude of the societal effects of the accident at the Fukushima Dai-ichi nuclear power plant in Japan led the NRC to evaluate how its regulatory framework considers offsite property damage and the associated economic consequences that could be caused by a significant radiological release from an NRC-licensed facility.

Following this evaluation, the NRC staff requested Commission approval in SECY–12–0110, ''Consideration of Economic Consequences within the U.S. Nuclear Regulatory Commission's Regulatory Framework,'' dated August 14, 2012 (ADAMS Package Accession No. ML12173A478) to continue work on updating the 1995 dollar per person-rem conversion factor in NUREG–1530 (ADAMS Accession No. ML063470485). The 1995 dollar per person-rem value was set at $2,000. This number resulted from the multiplication of a VSL of $3 million by a risk coefficient for stochastic health effects of 7.3×10^{-4} per person-rem. In the March 20, 2013 staff requirements memorandum associated with SECY–12–0110 (ADAMS Accession No. ML13079A055), the Commission approved the staff's request to continue the activities associated with the update to the dollar per person-rem conversion factor policy.

This revision to NUREG–1530 makes five main changes. First, the revision to NUREG–1530 updates the dollar per person-rem conversion factor to $5,200 per person-rem. The value is based on the application of an updated best estimate VSL of $9.0 million and the U.S. Environmental Protection Agency's (EPA) cancer mortality risk coefficient factor of 5.8×10^{-4} per person-rem. The VSL estimate is derived from the average of both the U.S. Department of Transportation's and the EPA's VSL in 2014 dollars.

Second, the NUREG adopts low and high dollar per person-rem conversion factor estimates for use in sensitivity analyses. The NRC staff recommends varying the dollar per person-rem conversion factor by plus or minus 50 percent. This results in a range of conversion factors with a low value of $2,600 per person-rem and a high value of $7,800 per person-rem.

Third, this revision to NUREG–1530 indicates that the NRC staff will round to two significant figures instead of rounding to the nearest thousand dollar value. Historically, the NRC has rounded this number to the nearest thousand dollars for the purposes of dollar per person-rem estimates. Given the large uncertainties inherent in this approach, updates would have little to no impact on this value between periodic baseline reviews.

Fourth, this revision establishes a methodology for keeping the dollar per person-rem conversion factor up-to-date. An example of the NRC's methodology to update the dollar per person-rem conversion factor is provided in the NUREG. The NUREG also provides procedures for re-baselining the dollar per person-rem conversion factor.

Finally, this revision provides guidance to the NRC staff on when to use a higher dollar per person-rem factor in rare accident sequences with high dose or dose rates for a portion of the population.

II. Public Outreach

The NRC staff held a Category 3 public meeting on April 2, 2015, to discuss the update to NUREG–1530. The NRC presentation can be found in ADAMS under Accession No. ML15086A112, and the meeting summary under Accession No. ML15098A649. In response to this meeting, the Nuclear Energy Institute submitted a letter to the NRC, which provided feedback on the proposed update. This letter and the associated attachment can be found in ADAMS under Accession Nos. ML15126A489 and ML15126A498, respectively. The NRC staff published the draft NUREG–1530, Revision 1 in the **Federal Register** (80 FR 53585, September 4, 2015) for a 60-day public comment period. The staff received 11 comment submissions with a total of 38 individual comments from industry and members of the public. The NRC responses to these public comments can be found in ADAMS under Accession No. ML16147A501. External participants also expressed views on the update to NUREG–1530 during the July 26, 2016, Commission meeting with NRC stakeholders. Additionally, the NRC staff briefed the Advisory Committee on Reactor Safeguards (ACRS) Regulatory Policies and Practices Subcommittee on February 7, 2017, and the ACRS Full Committee on March 9, 2017.

III. Backfitting, Forward Fitting, and Issue Finality

The NRC's issuance and use of this report do not constitute backfitting as that term is defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; do not affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' and do not constitute forward fitting as that term is defined and described in MD 8.4.

IV. Congressional Review Act

This NUREG 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.

Dated: February 22, 2022.

For the Nuclear Regulatory Commission.

John R. Tappert,

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

[FR Doc. 2022–04058 Filed 2–24–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0194]

Guidance for Implementation of 10 CFR 50.59, ''Changes, Tests and Experiments,'' at Non-Power Production or Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 2.8 (Revision 0), Guidance for Implementation of 10 CFR 50.59, ''Changes, Tests and Experiments,'' at Non-Power Production or Utilization Facilities. This RG describes an approach that is acceptable to the NRC staff to meet the regulatory requirements, ''Changes, tests and experiments,'' at a non-power production and utilization facility, as defined in RG 2.8.

DATES: Revision 0 to RG 2.8 is available on February 25, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0194 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–2021–0194. 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, 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:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

Revision 0 to RG 2.8 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22020A292 and ML21243A104, respectively.

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

FOR FURTHER INFORMATION CONTACT: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov* and Duane Hardesty, Office of Nuclear Reactor Regulation, telephone: 301–415–3724, email: *Duane.Hardesty@nrc.gov.* Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

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

RG 2.8 was issued with a temporary identification of Draft Regulatory Guide, DG–DG–2007 (ADAMS Accession No. ML21243A103).

II. Additional Information

The NRC published a notice of the availability of DG–2007 in the **Federal Register** on November 23, 2021 (86 FR 66464) for a 30-day public comment period. The public comment period closed on December 23, 2021. Public comments on DG–2007 and the staff responses to the public comments are available under ADAMS under Accession No. ML22020A296.

III. 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.

IV. Backfitting, Forward Fitting, and Issue Finality

The NRC staff may use this RG as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this RG to support NRC staff actions in a manner that would constitute backfitting as that term is defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.'' However, the backfitting provisions in 10 CFR 50.109, do not apply to Part 50 licensees other than power reactors. The regulatory basis for 10 CFR 50.109 was expressed solely in terms of nuclear power reactors. The NRC's Advanced Notice of Proposed Rulemaking, Policy Statement, Proposed Rules, and Final Rules for amendments to 10 CFR 50.109 in the 1980s involved only nuclear power reactors. As a result, the NRC has not applied 10 CFR 50.109 to research reactors, testing facilities, and other non-power facilities licensed under 10 CFR part 50 (*e.g.,* ''Final Rule; Clarification of Physical Protection Requirements at Fixed Sites''). In a 2012 final rule concerning non-power reactors, the NRC stated, ''The NRC has determined that the backfit provisions in 10 CFR 50.109 do not apply to test, research, or training reactors because the rulemaking record for 10 CFR 50.109 indicates that the Commission intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record'' (''Final Rule; Requirements for Fingerprint-Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Non-Power Reactors'').

V. 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: February 22, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

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

[FR Doc. 2022–03993 Filed 2–24–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, 50–286, and 72–051; NRC–2022–0021]

Holtec Decommissioning International, LLC; Indian Point Nuclear Generating Station; Units 1, 2, and 3; Exemption From Certain Low-Level Waste Shipment Tracking Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request dated November 19, 2021, from Holtec Decommissioning International, LLC (HDI), for Indian Point Nuclear Generating Station Units 1, 2, and 3 or Indian Point Energy Center (IPEC), from the requirement to investigate, trace, and report to the NRC any low-level radioactive waste shipment or part of a shipment for which acknowledgement of receipt is not received by HDI within 20 days after transfer from IPEC. HDI requested that this time period be extended from 20 to 45 days. HDI requested this change to avoid the administrative burden of investigating, tracing, and reporting on shipments that continue to be under requisite controls.

DATES: The exemption was issued on February 14, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0021 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–2022–0021. 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, 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:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zahira Cruz Perez, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3808, email: *Zahira.CruzPerez@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: February 22, 2022.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–003, 50–247, 50–286, 72–051

Holtec Decommissioning International, LLC

Indian Point Nuclear Generating Station Units Nos. 1, 2, and 3

Exemption From Certain Low-Level Waste Shipment Tracking Requirements

I. Background

Indian Point Nuclear Generating Station Units 1, 2, and 3 or Indian Point Energy Center (IPEC), is licensed to Holtec Decommissioning International, LLC (HDI) under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 (provisional license DPR–5, renewed license DPR–26 and DPR–64, Docket Nos. 50–003, 50–247, 50–286, respectively). The facilities consist of three pressurized-water reactors located in Buchanan, New York, in Westchester County, all of which are permanently shut down. IPEC Unit No. 1 was permanently shut down in 1974 and is in defueled status, IPEC Unit Nos. 2 and 3 permanently ceased operations on April 30, 2020, and April 30, 2021, respectively. Fuel was permanently removed from IPEC Unit Nos. 2 and 3 and placed in spent fuel pools on May 12, 2020, and May 11, 2021, respectively.

HDI is currently decommissioning the IPEC facility. Inherent to the decommissioning process, large volumes of low-level radioactive waste are generated. This low-level radioactive waste requires processing and disposal or disposal without processing, as appropriate. To this end, HDI will transport, by truck or by mixed mode shipments like a combination of truck and rail, low-level radioactive waste from IPEC to locations such as the waste disposal facility operated by Waste Control Specialists (WCS) in Andrews, Texas. The estimated license termination date for IPEC is 2062, and the estimated date for partial site release, for the entire site except for the Independent Spent Fuel Storage Installation (ISFSI), is 2033. The site restoration activities will be completed by 2062. HDI projects that all decommissioning activities, except for decommissioning the ISFSI, will be completed by early 2032, and expects to complete transfer of spent fuel to the ISFSI by 2024.

II. Request/Action

By letter dated November 19, 2021 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML21323A070), as supplemented on February 3, 2022 (ADAMS Accession No. ML22034A603), HDI requested an exemption from certain requirements 10 CFR part 20, ''Standards for Protection Against Radiation,'' Appendix G, ''Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests,'' Section III.E for shipments of low-level radioactive waste from IPEC. As indicated by HDI in its request, this regulation requires HDI to investigate, trace, and report to the NRC any low-level radioactive waste shipment or part of a shipment for which acknowledgement of receipt is not received by HDI within 20 days after transfer. HDI requested that this time

period be extended from 20 days to 45 days for ''mixed mode shipments from IPEC, including combination of truck/rail shipments.''

III. Discussion

The NRC's regulations at 10 CFR 20.2301, ''Applications for exemptions,'' allow the Commission to grant exemptions from the requirements of the regulations in 10 CFR part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property.

A. The Exemption Is Authorized by Law

The requested exemption from 10 CFR part 20, Appendix G, Section III.E would extend the receipt acknowledgment period from 20 days to 45 days before HDI would have to investigate, trace, and report on the status of a mixed mode, low-level radioactive waste shipment being transported from IPEC to a licensed low-level radioactive waste processing or land disposal facility. As stated above, 10 CFR Section 20.2301 allows the NRC to grant exemptions from the requirements of 10 CFR part 20 when, in part, the exemptions are authorized by law. The NRC determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and other regulatory requirements. Therefore, the NRC finds that the requested exemption is authorized by law.

B. The Exemption Would Not Result in Undue Hazard to Life or Property

As stated in Enclosure 1 to SECY–18–0055, ''Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning'' (ADAMS Package Accession No. ML18012A019), the underlying purpose of 10 CFR part 20, Appendix G, Section III.E is to require licensees to investigate, trace, and report on low-level radioactive waste shipments that have not reached their destination, as scheduled, for unknown reasons.

In support of its exemption request, HDI identified the NRC staff statement in Enclosure 1 to SECY–18–0055 that ''operating experience indicates that, while the 20-day receipt notification window is adequate for waste shipments by truck, other modes of shipment such as rail, barge, or mixed-mode shipments, such as combinations of truck and rail, barge and rail, and barge and truck shipments, may take more than 20 days to reach their destination due to delays in the route that are outside the shipper's control (*e.g.,* rail cars in switchyards waiting to be included in a complete train to the disposal facility).'' On this basis, the NRC staff proposed to amend 10 CFR part 20, Appendix G, Section III.E to extend the receipt notification window to 45 days. On November 3, 2021, the Commission approved publication of this proposed rule in the **Federal Register**, including the provision moving the receipt notification window from 20 days to 45 days (ADAMS Accession No. ML21307A046). HDI also stated that its exemption request is similar to those previously submitted to and approved by the NRC for San Onofre Nuclear Generating Station, Fort Calhoun Station, Vermont Yankee Nuclear Power Station, and Pilgrim Nuclear Power Station (ADAMS Accession Nos. ML20287A358, ML20162A155, ML20017A069, and ML21267A519 respectively).

HDI stated that in its experience at IPEC thus far in 2021, numerous rail shipments can take longer than 20 days. According to HDI, exceeding the 20-day requirement results in the administrative burden of investigating and reporting.

HDI stated in the February 3, 2022 supplemental letter in response to NRC staff request for additional information, that in letters dated November 19, 2021, December 21, 2021, and January 13, 2022 (ADAMS Accession Nos. ML21323A108, ML21355A211, and ML22013A706, respectively), HDI reported to the NRC the results of investigations performed to shipments and transport of low-level radioactive waste shipped via truck from IPEC to Newton, Connecticut and transferred to rail to the WCS disposal facility in Andrews, Texas. The total transport time for these low-level radioactive waste shipments were 21–22 days. HDI stated that these trace investigations identified that there were no significant or unusual transport delays encountered.

HDI explained that because there is not direct rail access at IPEC, the disposal of IPEC low-level radioactive waste utilizes road shipments to intermodal transfer terminals for transfer of containers onto rail as the primary transport method. In the future, HDI indicated that it may utilize other methods of transport such as barge. According to HDI, these truck-to-rail shipments may sit on the rail spur at a remote railyard (*e.g.,* waiting for a train to depart or allowing for railcar repair), which may add to shipping delays. In addition, HDI states that administrative processes at the disposal facility and communication of receipt times could add several additional days.

Additionally, as indicated in the exemption request, for truck and rail shipments from IPEC, HDI will use a tracking system that allows daily monitoring of a shipment's progress to its destination, and IPEC shipping procedures prescribe the expectations for tracking and communications during transit. The NRC staff notes that this will allow for monitoring the progress of shipments on a daily basis, if needed, in lieu of the 20-day requirement, and will initiate an investigation as provided for by 10 CFR part 20, Appendix G, Section III.E after 45 days. In addition, in its supplemental letter, HDI stated that it is contracted with WCS for transportation and disposal of all radioactive waste at IPEC, and that the agreement includes a WCS Shipping Services individual dedicated for onsite support to ensure packaging and shipment arrangements are made in accordance with state and federal guidelines. The online tracking portal is part of the service provided by WCS. Daily reports of railcar locations are sent to the HDI Waste Manager at IPEC with reporting starting the day the shipment leaves the IPEC.

Because of this oversight and the ability to monitor low-level radioactive waste shipments throughout the entire journey from IPEC to a disposal or processing facility, the staff concludes that it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or HDI and that, therefore, there is no potential health or safety concern presented by the requested exemption. Furthermore, by extending the time for receipt acknowledgment to 45 days before requiring investigations, tracing, and reporting, a reasonable upper limit on shipment duration is maintained in the event that a breakdown of normal tracking systems were to occur.

Based on the above, the NRC staff finds that the requested exemption would not result in undue hazard to life or property.

C. Environmental Considerations

With respect to compliance with section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA), the NRC staff has determined that the proposed action, the approval of the HDI exemption request, is within the scope of the categorical exclusion at 10 CFR Section 51.22(c)(25). The proposed granting of the exemption from certain requirements of the NRC's regulations at 10 CFR part 20, Appendix G, Section III.E, would: (i) Present no significant hazards consideration; (ii) not result in a significant change in the types or significant increase in the amounts of

any effluents that may be released offsite; (iii) not result in a significant increase in individual or cumulative public or occupational radiation exposure; (iv) have no significant construction impact; and (v) not result in a significant increase in the potential for or consequences from radiological accidents. Additionally, the requirements from which the exemption is sought involve reporting requirements under 10 CFR Section 51.22(c)(25)(vi)(B) and inspection or surveillance requirements under 10 CFR Section 51.22(c)(25)(vi)(C). Given the applicability of a relevant categorical exclusion, no further analysis is required under NEPA.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR Section 20.2301, the exemption is authorized by law and will not result in undue hazard to life or property. Therefore, effective immediately, the Commission hereby grants HDI an exemption from 10 CFR part 20, Appendix G, Section III.E, to extend the receipt of notification period from 20 days to 45 days after transfer for rail or mixed-mode shipments of low-level radioactive waste from IPEC to a licensed land disposal or processing facility.

Dated: February 14, 2022.

For the Nuclear Regulatory Commission.

Jane E. Marshall,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–04034 Filed 2–24–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 21, 28, March 7, 14, 21, 28, April 4, 2022.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of February 21, 2022

Thursday, February 24, 2022

9:55 a.m. Affirmation Session (Public Meeting) (Tentative)

(a) Florida Power & Light Company (Turkey Point Nuclear Generating Units 3 and 4), Intervenors' Petitions for Review of LBP–19–3, LBP–19–6, and LBP–19–8 (Tentative)

(b) Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3); Exelon Generation Company, LLC (Peach Bottom Atomic Power Station, Units 2 and 3); Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4); NextEra Energy Point Beach, LLC (Point Beach Nuclear Plant, Units 1 and 2); and Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2) Order that Provides Generic Direction for All Subsequent License Renewal Proceedings Pending Before the Agency (Tentative)

Additional Information: By a vote of 3–0 on February 18, 2022, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on February 24, 2022.

(c) Exelon Generating Company, LLC (Peach Bottom Atomic Power Station, Units 2 and 3), Beyond Nuclear's Motions to Submit a New Contention and Reopen the Record (Tentative)

(Contact: Wesley Held: 301–287–3591)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

10:00 a.m. Briefing on Regulatory Research Program Activities (Public Meeting)

(Contact: Nick Difrancesco: 301–415–1115)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Week of February 28, 2022

There are no meetings scheduled for the week of February 28, 2022.

Week of March 7, 2022—Tentative

There are no meetings scheduled for the week of March 7, 2022.

Week of March 14, 2022—Tentative

There are no meetings scheduled for the week of March 14, 2022.

Week of March 21, 2022—Tentative

There are no meetings scheduled for the week of March 21, 2022.

Week of March 28, 2022—Tentative

There are no meetings scheduled for the week of March 28, 2022.

Week of April 4, 2022—Tentative

There are no meetings scheduled for the week of April 4, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 23, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–04157 Filed 2–23–22; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: CAHPS Enrollee Survey; OMB Number 3206–0274

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments

SUMMARY: Healthcare and Insurance, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the administration of the Consumer Assessment of Healthcare Providers and Systems (CAHPS®)

survey for the Federal Employees Health Benefits (FEHB) Program. CAHPS® surveys ask consumers and patients to report on and evaluate their experiences with health care. These surveys cover topics that are important to consumers and focus on aspects of quality that consumers are best qualified to assess, such as the communication skills of providers and ease of access to health care services.

DATES: Comments are encouraged and will be accepted until April 26, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments by the following method:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Michael Kaszynski, Senior Policy Analyst at *Michael.kaszynski@opm.gov*; 202–606–1413.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

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 submissions of responses.

Program Description

OPM uses the CAHPS results as part of the FEHB Plan Performance Assessment (PPA). The PPA enables a consistent, objective evaluation of carrier performance and also provides more transparency for enrollees. This assessment uses a discrete set of quantifiable measures to examine key aspects of performance in the areas of clinical quality, customer service and resource use. Eight CAHPS measures are part of this discrete set of quantifiable measures.

Taken together with more traditional assessments of contract administration, these measures help ensure that enrollees receive high quality affordable healthcare and a positive customer experience. The PPA is linked to carrier profit and adjustment factors. FEHB contracts include language to incorporate the PPA as a determinant of the Service Charge or Performance Adjustment.

Analysis

Agency: Healthcare and Insurance, Office of Personnel Management.

Authority: 5 U.S.C. 8910.

Title: CAHPS Survey.

OMB Number: 3206–0274.

Frequency: Annually.

Affected Public: Federal Employees and Retirees.

Number of Respondents: 73,505.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 18,376 hours.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–04054 Filed 2–24–22; 8:45 am]

BILLING CODE 6325–64–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94281; File No. SR–ICEEU–2022–005]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Rate of Return on Euro and Pound Sterling Cash Margin and Guaranty Fund Deposits

February 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend the rate of return paid by the Clearing House on Euro (''EUR'') and Pound Sterling (''GBP'') cash margin and Guaranty Fund deposits. The proposed amendments do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe 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

(a) Purpose

(a) The purpose of the proposed rule changes is for ICE Clear Europe to [sic] its rate of return paid on EUR and GBP cash margin and Guaranty Fund deposits applicable to all Clearing Members for house and customer accounts. ICE Clear Europe pays a rate of return on cash deposited by Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

Members in respect of margin and Guaranty Fund requirements referred to as the ICE Deposit Rate (the ''IDR''). The IDR is calculated daily and applied to cash balances held at the close of business on the previous business day in respect of US Dollar (''USD''), EUR and GBP deposits. The IDR is calculated as the net income earned on cash deposits in the relevant currency (positive or negative) less a charge or spread. Currently, the spread for all currencies is 15 bps.

(b) ICE Clear Europe is proposing to increase the spread for EUR balances from 15 bps to 25 bps and reduce the spread for GBP balances from 15 bps to 12 bps. The spread for USD balances would remain unchanged at 15 bps. ICE Clear Europe has determined that in light of financial market conditions, including repo rates available in the market, the current spread levels have provided an incentive for Clearing Members to provide EUR balances as compared to GBP balances, including by using EUR balances to cover margin obligations denominated in GBP. Such a practice by Clearing Members could result in reduced available liquidity for the Clearing House in GBP. To avoid such potential concerns, ICE Clear Europe believes it is appropriate to reduce the IDR on EUR balances (through a higher spread) while comparatively increasing the IDR on GBP balances (through a lower spread). ICE Clear Europe believes the change would better align the relative costs and benefits of using EUR and GBP to cover margin and Guaranty Fund obligations and thereby improve Clearing House liquidity management.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of the Act, including Section 17A of the Act[6] and regulations thereunder applicable to it. In particular, Section 17A(b)(3)(D) of the Act[7] requires that ''[t]he rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants''. ICE Clear Europe believes that the IDR, as proposed to be amended, would be reasonable and appropriate in light of market conditions, including available repo rates, for the relevant currencies. The proposed modifications would apply to all Clearing Members and other market participants who hold cash balances in EUR and GBP. Further, ICE Clear Europe has determined that the revised spreads would enhance GBP liquidity by providing a greater incentive for Clearing Members to provide GBP balance to satisfy GBP margin and Guaranty Fund obligations as compared to EUR balances. As such, in ICE Clear Europe's view, the amendments are consistent with the equitable allocation of reasonable dues, fees and other charges among its Clearing Members and other market participants, within the meaning of Section 17A(b)(3)(D) of the Act.[8]

The proposed amendments are also consistent with the requirements of Section 17A(b)(3)(F) of the Act[9] which requires, among other things, that ''[t]he rules of a clearing agency [. . .] are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency''. As noted above, the GBP and EUR spreads, as proposed to be amended, would apply on a currency level and would apply to all Clearing Members. The amendments would not otherwise change the ability of Clearing Members to post GBP and EUR in satisfaction of their obligations. As a result, the amendments would not result in any unfair discrimination among Clearing Members in their use of the Clearing House, within the meaning of Section 17A(b)(3)(F) of the Act.[10]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. Although ICE Clear Europe is revising certain spreads applied to the IDR, as set forth herein, it believes such changes are appropriate to align incentives for providing EUR and GBP deposits with general market conditions and to avoid potential reductions in GBP liquidity. Further, as discussed above, the changes to the spreads would be applied equally to all Clearing Members who deposit cash balances in EUR and GBP. ICE Clear Europe does not believe that the amendments would adversely affect the ability of such Clearing Members or other market participants generally to access clearing services. Further, ICE Clear Europe believes that the amendments would not otherwise affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for obtaining clearing services. As a result, ICE Clear Europe does not believe the amendments would have any impact or impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments 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 pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2022–005 and should be submitted on or before March 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03961 Filed 2–24–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94287; File No. SR–PEARL–2022–05]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

February 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to remove certain credits and amend the monthly Trading Permit [3] fees for Exchange Members.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to remove certain credits and amend the monthly Trading Permit fees (the ''Proposed Access Fees'') for Exchange Members. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change [7] and subsequently suspended the Frist [sic] Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on October 29, 2021, with the proposed fee changes being effective beginning November 1, 2021 (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness (''Third Proposed Rule Change'').[11] The Third Proposed Rule Change was published for comment in the **Federal Register** on January 10, 2022.[12] The Third Proposed Rule Change meaningfully attempted to provide additional justification and explanation for the proposed fee changes, directly respond to the points raised in the single comment letter submitted on the First Proposed Rule Change, and respond to feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Second Proposed Rule Change. Although the Commission again did not receive any comment letters on the Third Proposed

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] 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* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 (''SIG Letter'').

[8] *See* Securities Exchange Act Release No. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54).

[10] *See id.*

[11] Securities Exchange Act Release No. 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR–PEARL–2021–59).

[12] *Id.*

Rule Change, the Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and now submits this revised proposal for immediate effectiveness (''Fourth Proposed Rule Change''). This Fourth Proposed Rule Change provides additional justification and explanation for the proposed fee changes.

Removal of the ''Monthly Volume Credit''

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018 [13] to encourage Members to send increased Priority Customer [14] order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction rebates and fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX Interface [15] or MEO Interface.[16] Currently, the Exchange assesses the Monthly Volume Credit to each Member that has executed Priority Customer volume along with that of its Affiliates,[17] not including Excluded Contracts,[18] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[19] as set forth in the following table:

Type of member connection	Monthly volume credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	1,000

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. Prior to the First Proposed Rule Change, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

Beginning with the First Proposed Rule Change, the Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange believes it is appropriate to remove this credit. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share.

Removal of the Trading Permit Fee Credit

The Exchange proposes to amend Section (3)(b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. Prior to the First Proposed Rule Change, the Trading Permit fee credit was applicable to Members that connect via both the MEO and FIX Interfaces. Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members received a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface prior to the First Proposed Rule Change. The Exchange proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section (3)(b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amendment of Trading Permit Fees

The Exchange proposes to amend Section (3)(b) of the Fee Schedule to increase the amount of the monthly Trading Permit fees. The Exchange issues Trading Permits to Members who are either Electronic Exchange Members [20] (''EEMs'') or Market Makers.[21] The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based

[13] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[14] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[15] The term ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[16] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[17] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[18] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[19] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[20] 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.

[21] 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 these Rules. *See* the Definitions Section of the Fee Schedule.

upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [22] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Prior to the First Proposed Rule Change, each Member who connected to the System [23] via the FIX Interface was assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $250;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $350; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

Prior to the First Proposed Rule Change, each Member who connected to the System via the MEO Interface was assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $300;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $400; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $500.

Proposed Trading Permit Fees. Since the First Proposed Rule Change, the Exchange proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits grant access to the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange proposes to increase its monthly fees since it had not done so since the fees were first adopted in 2018 [24] and are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that the its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge a similar, fixed trading permit fee to certain users, and a similar, varying trading permit fee to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.[25]

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permits and access fees for similar membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other options exchanges. The Exchange believes other exchanges' access and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

Exchange	Type of membership or trading permit fees	Monthly fee
MIAX Pearl (as proposed)	Trading Permit access via FIX Interface	Tier 1: $500. Tier 2: $1,000. Tier 3: $1,500.
	Trading Permit access via MEO Interface.	Tier 1: $2,500. Tier 2: $4,000. Tier 3: $6,000.
NYSE Arca, Inc. (''NYSE Arca'') [26]	Options Trading Permits (''OTP'')	$6,000 for up to 175 option issues. Additional $5,000 for up to 350 option issues. Additional $4,000 for up to 1,000 option issues. Additional $3,000 for all option issues. Additional $1,000 for the 5th OTP and each OTP thereafter.

[22] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[23] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[24] *See supra* note 13.

[25] *See* the MIAX Fee Schedule, Section 3)b); MIAX Emerald Fee Schedule, Section 3)b).

Exchange	Type of membership or trading permit fees	Monthly fee
NYSE American, LLC (“NYSE American”)[27]	ATP Trading Permits	$8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX LLC (“Nasdaq PHLX”)[28]	Streaming Quote Trader permit fees	Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200.
	Remote Market Maker Organization permit fees.	Tier 1 (less than 100 option classes): $5,500. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC (“Nasdaq ISE”)[29]	Access Fees	Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe C2 Exchange, Inc. (“Cboe C2”)[30]	Access Permit Fees	Market Makers: $5,000. Electronic Access Permits: $1,000.

Implementation

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act[32] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons because, in order to attract order flow when the Exchange first launched operations, the Exchange established the Monthly Volume Credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ‘‘BOX Order’’).[33] On May 21, 2019, the Commission Staff issued guidance ‘‘to assist the national securities

[26] NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1.

[27] NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24.

[28] Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees.

[29] Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services.

[30] Cboe C2 Fee Schedule, Access Fees.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4) and (5).

[33] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [34] Based on both the BOX Order and the Guidance, the Exchange believes that it has clearly met its burden to demonstrate that the proposed fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX and MIAX Emerald, to adopt or amend non-transaction fees (including port and connectivity fees) and market data fees.[35]

The Proposed Access Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees are reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems the Trading Permit fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements.

In the Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [36] The Guidance further states that, '' . . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [37] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.'' [38] The Exchange does not assert that the Proposed Access Fees are constrained by competitive forces. Rather, the Exchange asserts that the Proposed Access Fees are reasonable because they will permit recovery of the Exchange's costs in providing access via Trading Permits and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [39] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [40] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the Proposed Access Fees are reasonable and do not result in a ''supra-competitive'' [41] profit. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees. As a result of this analysis, the Exchange believes the Proposed Access Fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering Trading Permit access to the Exchange.

The Proposed Access Fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide the services associated with Trading Permits, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of Trading Permits) to estimate such costs,[42] as well as the relative costs of providing and maintaining Trading Permits, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining the services associated with Trading Permits because of the uncertainty of forecasting subscriber decision making with respect to firms' needs and the likely potential for increased costs to procure the third-party services described below.

To determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing

[34] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[35] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05) (proposal to establish market data fees for MIAX Emerald ToM, Administrative Information Subscriber feed, and MIAX Emerald Order Feed); 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01) (proposal to increase connectivity fees); 91460 (April 2, 2021), 86 FR 18349 (SR–EMERALD–2021–11) (proposal to adopt port fees, increase connectivity fees, and increase additional limited service ports); 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (proposal to adopt trading permit fees).

[36] *See* Guidance, *supra* note 34.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] For example, the Exchange only included the costs associated with providing and supporting the access services associated with the Proposed Access Fees and excluded from its cost calculations any cost not directly associated with providing and maintaining such services. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining the access services associated with the Proposed Access Fees.

towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of access services associated with the Proposed Access Fees. This analysis included discussions with each Exchange department head to determine the expenses that support access services associated with the Proposed Access Fees. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The Exchange reviewed each individual expense to determine if such expense was related to the proposed fees. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services for the Proposed Access Fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice.

The internal cost analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of services associated with the proposed fees. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange has historically, and on an ongoing basis, periodically revisits its costs and resource allocations to ensure it is appropriately allocating resources to properly provide services to the Exchange's constituents. Any requirement that an exchange should conduct a periodic re-evaluation on a set timeline of its cost justification and amend its fees accordingly should be established by the Commission holistically, applied to all exchanges and not just pending fee proposals such as this filing. In order to be fairly applied, such a mandate should be applied to existing market data fees as well.

In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. In fact, the detail and analysis provided in this proposed rule change far exceed the level of disclosure provided in other exchange fee filings that have not been suspended by the Commission during its 60-day suspension period. A Commission determination that it is unable to make a finding that this proposed rule change is consistent with the Exchange Act would run contrary to the Commission Staff's treatment of other recent exchange fee proposals that have not been suspended and remain in effect today.[43] For example, a proposed fee filing that closely resembles the Exchange's current filing was submitted in 2020 by the Cboe Exchange, Inc. (''Cboe'') and increased fees for Cboe's 10Gb connections, an access fee.[44] This filing was submitted on September 2, 2020, nearly 15 months after the Staff's Guidance was issued. In that filing, the Cboe stated that the ''proposed changes were not designed with the objective to generate an overall increase in access fee revenue.'' [45] This filing provided no cost based data to support its assertion that the proposal was intended to be revenue neutral. Among other things, Cboe did not provide a description of the costs underlying its provision of 10Gb connections to show that this particular fee did not generate a supra-competitive profit or describe how any potential profit may be offset by increased costs associated with another fee included in its proposal. This filing, nonetheless, was not suspended by the Commission and remains in effect today.

The Exchange notes that the Investors Exchange, Inc. (''IEX'') recently submitted a proposed rule change to adopt fees for two real-time proprietary market data feeds, TOPS and DEEP (''IEX Fee Proposal''). IEX previously provided its TOP and DEEP market data feeds for free and proposed to adopt modest, below market fees. The IEX Fee Proposal included a detailed subscriber data and cost-based analysis in compliance with the Guidance. Nonetheless, on December 30, 2021, the Commission suspended the IEX Fee Proposal and instituted proceedings to determine whether to approve or disapprove the IEX Fee Proposal.[46]

The Commission received three comment letters on the IEX Order.[47] The Virtu Letter and HMA Letter 2 specifically applaud the amount of detail included in the IEX Fee Proposal. Specifically, the Virtu Letter states that ''[i]n significant detail, IEX provides data about three cost components: '(1) direct costs, such as servers, infrastructure, and monitoring; (2) enhancement initiative costs (*e.g.,* new functionality for IEX Data and increased capacity for the proprietary market data feeds . . .); and (3) personnel costs.' '' [48] HMA Letter 2 similarly commends the level of detail included in the IEX Fee Proposal and also highlights the disparate treatment by Commission Staff of exchange fee filings.[49] HMA Letter 2 provides three examples to support this assertion.[50] The Nasdaq Letter urges the

[43] *See, e.g.,* Securities Exchange Act Release Nos. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR–PHLX–2021–58) (increasing several market data fees and adopting new market data fee without providing a cost based justification); 91339 (March 17, 2021), 86 FR 15524 (March 23, 2021) (SR–CboeBZX–2021–020) (increasing fees for a market data product while not providing a cost based justification for the increase); 93293 (October 21, 2021), 86 FR 57716 (October 18, 2021) (SR–PHLX–2021–058) (increasing fees for historical market data while not providing a cost based justification for the increase); 92970 (September 14, 2021), 86 FR 52261 (September 20, 2021) (SR–CboeBZX–2021–047) (adopting fees for a market data related product while not providing a cost based justification for the fees); and 89826 (September 10, 2021), 85 FR 57900 (September 16, 2021) (SR–CBOE–2020–086) (increasing connectivity fees without including a cost based justification).

[44] *See* Securities Exchange Act Release No. 89826 (September 10, 2020), 85 FR 57900 (September 16, 2020) (SR–CBOE–2020–086) (increasing connectivity fees without including a cost based justification).

[45] *See id.* at 57909.

[46] *See* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2021) (SR–IEX–2021–14) (the ''IEX Order'').

[47] *See* letters to Ms. Venessa A. Countryman, Secretary, Commission, from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, Inc., dated January 26, 2022 (the ''Virtu Letter''), Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), dated January 26, 2022 (the ''HMA Letter 2''), and Erika Moore, Vice President and Corporate Secretary, The Nasdaq Stock Market LLC, dated January 27, 2022 (the ''Nasdaq Letter'').

[48] *See* Virtu Letter at page 3, *id.*

[49] HMA previously expressed their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' *See* letter from Tyler Gellasch, Executive Director, HMA, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter 1'').

[50] *See* HMA Letter 2 at 2–3. The Exchange has provided further examples to support HMA's assertion above. *See supra* note 39 and accompanying text.

Commission to approve the IEX Fee Proposal promptly and raises concern the questions asked by the Commission in the IEX Order imply that they are exercising rate making authority that they clearly do not possess. The Nasdaq Letter states that ''[i]f the Commission believes it has authority to conduct cost-plus ratemaking, the Administrative Procedure Act dictates that it must propose a rule for notice and comment and that its final rule must be prepared to withstand judicial scrutiny.'' [51] The Exchange agrees.

The Exchange believes exchanges, like all businesses, should be provided flexibility when allocating costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants. An exchange's costs may also vary based on fees charged by third parties and periodic increases to those fees that may be outside of the control of an exchange.

To determine the Exchange's projected revenues associated with the Proposed Access Fees in the instant filing, the Exchange analyzed the number of Members currently utilizing Trading Permits, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis projected or estimated future revenue growth or decline for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants and potential increase in internal and third party expenses. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the majority of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services. The Exchange notes that this is the same justification process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed and not suspended by the Commission when MIAX Emerald adopted trading permit fees.[52]

As outlined in more detail below, the Exchange projects that the final annualized expense for 2021 to provide the services associated with Trading Permits to be approximately $844,741 per annum or an average of $70,395 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 48 Trading Permits, for which the Exchange charged a total of $15,500. This resulted in a loss of $54,895 for that month (a margin of –354%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 47 Trading Permits,[53] for which the Exchange charged a total of approximately $93,500 for that month. This resulted in a profit of $23,105 for that month, representing a profit margin of approximately 24%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 24% per-month.[54] The Exchange cautions that this profit margin is likely to fluctuate from month to month based on the uncertainty of predicting how many Trading Permits may be purchased from month to month as Members and non-Members are able to add and drop permits at any time based on their own business decisions, which they frequently do. This profit margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[55] The Exchange has been subject to price increases upwards of 30% during the past year on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

As mentioned above, the Exchange projects that the final annualized expense for 2021 to provide the services associated with the Proposed Access Fees to be approximately $844,741 per annum or an average of $70,395 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[56] The Exchange notes that there

[51] *See* Nasdaq Letter at page 13, *id.*

[52] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Monthly Trading Permit Fees) (adopting tiered trading permit fee structure for Market Makers ranging from $7,000 to $22,000 per month and flat fee of $1,500 per month for EEMs).

[53] The Exchange notes that one Member dropped one Trading Permit between June 2021 and November 2021, as a result of the Proposed Access Fees.

[54] The Exchange notes that this profit margin differs from the First and Second Proposed Rule Changes because the Exchange now has the benefit of using a more recent billing cycle under the Proposed Access Fees (November 2021) and comparing it to a baseline month (June 2021) from before the Proposed Access Fees were in effect.

[55] *See* ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, *available at https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); *and* ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, *available at https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[56] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged

Continued

are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide access services associated with the Proposed Access Fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed and indeed is likely to increase rather than decrease over time. The Exchange believes the Proposed Access Fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[57] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading systems. To do so, the Exchange chose to waive the fees for some non-transaction related services or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[58] the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $844,741 or an average of $70,395 per month. The $844,741 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[59] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[60] The $844,741 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. In performing this calculation, the Exchange considered other services and to which the expense may be applied and how much of the expense is directly or indirectly utilized in providing those other services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $188,815. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[61] which

to the Exchange by approximately 11% for the SFTI network.

[57] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

[58] The Exchange has not yet finalized its 2021 year end results.

[59] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[60] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[61] In fact, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. This fee increase by ICE data services, while not subject to Commission review, has a material impact on costs to exchanges and other market participants that provide downstream access to other market participants. The Exchange notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule

supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to the providing access services in connection with the Proposed Access Fees. Only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 8% of the total applicable Equinix expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[62]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 4% of the total applicable Zayo expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[63]

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 3% of the total applicable SFTI and other service providers' expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[64]

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security

19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

[62] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

[63] *Id.*

[64] *Id.*

monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 5% of the total applicable hardware and software provider expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[65]

Internal Expense Allocations

For 2021, total projected internal expenses relating to the Exchange providing the access services associated with the Proposed Access Fees, is projected to be $655,925. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below.

For clarity, and as stated above, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the access services in connection with the Proposed Access Fees. Only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, as part its ongoing assessment of costs and expenses (described above), the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $549,834, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 6% of the total applicable employee compensation and benefits expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[66]

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $66,316, which is only a portion of the $1,326,325 total projected expense for depreciation and amortization. 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 and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 5% of the total applicable depreciation and amortization expense to providing the services associated with the proposed fees, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[67]

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $39,775, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to

[65] *Id.*

[66] *Id.*

[67] *Id.*

allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network. According to the Exchange's calculations, it allocated approximately 8% of the total applicable occupancy expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[68]

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Based on the above, the Exchange believes that its provision of access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. As described above, the Exchange projects that the annualized expense for 2021 to provide the services associated with Trading Permit to be approximately $844,741 per annum or an average of $70,395 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 48 Trading Permits, for which the Exchange charged a total of $15,500. This resulted in a loss of $54,895 for that month (a margin of −354%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 47 Trading Permits,[69] for which the Exchange charged a total of approximately $93,500 for that month. This resulted in a profit of $23,105 for that month, representing a profit margin of approximately 24%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 24% per-month. The Exchange believes this modest profit margin will allow it to continue to recoup its expenses and continue to invest in its technology infrastructure. Therefore, the Exchange also believes that this proposed profit margin increase is reasonable because it represents a reasonable rate of return.

Again, the Exchange cautions that this profit margin is likely to fluctuate from month to month based in the uncertainty of predicting how many Trading Permits may be purchased from month to month as Members and non-Members are free to add and drop permits at any time based on their own business decisions. Notwithstanding that the revenue (and profit margin) may vary from month to month due to changes in the number of Trading Permits utilized and volume conducted on the Exchange, as well as changes to the Exchange's expenses, the number of Trading Permits utilized has not materially changed over previous months. Consequently, the Exchange believes that the months it has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses. This profit margin may also decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems.[70] Accordingly, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Guidance which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. This monthly analysis was also provided in response to comment received on prior submissions of this proposed rule change.

The Exchange reiterates that it only has four primary sources of revenue and cost recovery mechanisms: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. As a result, each of these fees cannot be ''flat'' and cover only the expenses directly related to the fee that is charged. The above revenue and associated profit margin therefore are not solely intended to cover the costs associated with providing services subject to the proposed fees.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line

[68] *Id.*

[69] The Exchange notes that one Member dropped one Trading Permit between June 2021 and November 2021, as a result of the Proposed Access Fees.

[70] *See supra* note 55.

item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Proposed Tiered-Pricing Structure Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes the proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it launched operations for its Trading Permit fees. Moreover, the tiered pricing structure for Trading Permits is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. The proposed tiers of Trading Permit fees will continue to apply to all Members and non-Members in the same manner based upon the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl-listed options. Members and non-Members may choose to purchase more than the one Trading Permit based on their own business decisions and needs. All similarly situated Members and non-Members would be subject to the same fees. The fees do not depend on any distinction between Members and non-Members because they are solely determined by the individual Members' or non-Members' business needs and their impact on Exchange resources.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to access the Exchange and the amount of the fees are based on the number of Trading Permits utilized using the FIX and MEO Interfaces, in addition to the amount of volume conducted on the Exchange. The proposed tiered pricing structure should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV. The higher the volume, the greater pull on Exchange resources. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.[71]

[71] Over the period from April 2021 until September 2021, the Exchange processed 3.15 billion messages via the FIX interface (0.43% of total messages received). Over that same time period, the Exchange processed 731.4 billion messages (99.57% of total messages received) over the MEO interface. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. The Exchange has also seen significant inflationary pressure on capital items that it needs to purchase to maintain its technology. The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages.

There are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide access or their fee markup over those costs, and therefore cannot use other exchanges' membership and access fees as a benchmark to determine a reasonable markup over the costs of providing the services associated with the Proposed Access Fees. Nevertheless, the Exchange believes the other exchanges' membership and participation fees are a useful example of alternative approaches to providing and charging for similar types of access. To that end, the Exchange believes the proposed tiered-pricing structure for its Trading Permits is reasonable because the proposed highest tier is still less than or similar to fees charged for similar access provided by other options exchanges with comparable market shares. The below table further illustrates this comparison.

Exchange	Type of membership or trading permit fees	Monthly fee
MIAX Pearl (as proposed)	Trading Permit access via FIX Interface	Tier 1: $500. Tier 2: $1,000. Tier 3: $1,500.
	Trading Permit access via MEO Interface.	Tier 1: $2,500. Tier 2: $4,000. Tier 3: $6,000.
NYSE Arca [72]	Options Trading Permits (“OTP”)	$6,000 for up to 175 option issues. Additional $5,000 for up to 350 option issues. Additional $4,000 for up to 1,000 option issues. Additional $3,000 for all option issues. Additional $1,000 for the 5th OTP and each OTP thereafter.
NYSE American [73]	ATP Trading Permits	$8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX [74]	Streaming Quote Trader permit fees	Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200.
	Remote Market Maker Organization permit fees.	Tier 1 (less than 100 option classes): $5,500. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE [75]	Access Fees	Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe C2 [76]	Access Permit Fees	Market Makers: $5,000. Electronic Access Permits: $1,000.

In each of the above cases, the Exchange's highest tiered Trading Permit fee, as proposed, is similar to or less than the fees of competing options exchanges with like market share for similar access. Further, as described in more detail below, many competing exchanges generate higher overall operating profit margins and higher ''access fees'' than the Exchange, inclusive of the projected revenues associated with the proposed fees. The Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic system, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive access fees. Each of the membership, trading permit and participation fee rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

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.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for users that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

[72] *See supra* note 26.
[73] *See supra* note 27.
[74] *See supra* note 28.
[75] *See supra* note 29.
[76] *See supra* note 30.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large users that connect via the MEO Interface and broker-dealers that are members of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[77] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange.

Regrettably, the Exchange believes that the application of the Guidance to date has adversely affected inter-market competition by impeding the ability of smaller, low cost exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services). Since the adoption of the Guidance, and even more so recently, it has become harder, particularly for smaller, low cost exchanges, to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of the affected exchanges' market participants. Although the Guidance has served an important policy goal of improving disclosures in proposed rule changes and requiring exchanges to more clearly justify that their market data and access fee proposals are fair and reasonable, it has also been inconsistently applied and therefore negatively impacted exchanges, and particularly many smaller, low cost exchanges, that seek to adopt or increase fees despite providing enhanced disclosures and rationale to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change[78] and no comment letters on the Second or Third Proposed Rule Changes. The SIG Letter cites Rule 700(b)(3) of the Commission's Rules of Fair Practice which places ''the burden to demonstrate that a proposed rule change is consistent with the Act on the self-regulatory organization that proposed the rule change'' and states that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.''[79] The SIG Letter's assertion that the Exchange has not met this burden is without merit, especially considering the overwhelming amounts of revenue and cost information the Exchange included in the First and Second Proposed Rule Changes and this filing.

Until recently, the Exchange has operated at a net annual loss since it launched operations in 2017.[80] As stated above, 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 requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange believes it has achieved this standard in this filing and in the First and Second Proposed Rules Changes. Similar justifications for the proposed fee change included in the First and Second Proposed Rule Changes, but also in this filing, were previously included in similar fee changes filed by the Exchange and its affiliates, MIAX Emerald and MIAX, and SIG did not submit a comment letter on those filings.[81] Those filings were not suspended by the Commission and continue to remain in effect. The justification included in each of the prior filings was the result of numerous withdrawals and re-filings of the proposals to address comments received from Commission Staff over many months. The Exchange and its affiliates have worked diligently with Commission Staff on ensuring the justification included in past fee filings fully supported an assertion that those proposed fee changes were consistent with the Act.[82] The Exchange leveraged

[77] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited December 20, 2021).

[78] *See supra* note 7.

[79] 17 CFR 201.700(b)(3).

[80] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 29, 2021, *available at https://sec.report/Document/9999999997-21-004367/.*

[81] *See* Securities Exchange Act Release Nos. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers); 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers); *and* 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR–MIAX–2021–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers).

[82] *See, e.g.,* Securities Exchange Act Release No. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). *See* Securities Exchange Act Release Nos. 90601 (December 8, 2020), 85 FR 80864 (December 14, 2020) (SR–EMERALD–2020–18) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–11); *and* 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–18). The Exchange initially filed a proposal to remove the cap on the number of additional Limited Service MEO Ports available to Members on April 9, 2021. *See* SR–PEARL–2021–17. On April 22, 2021, the Exchange withdrew SR–PEARL–2021–17 and refiled that proposal (without increasing the actual fee amounts) to provide further clarification

its past work with Commission Staff to ensure the justification provided herein and in the First, Second, and Third Proposed Rule Changes included the same level of detail (or more) as the prior fee changes that survived Commission scrutiny. The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension.'' [83] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [84] Therefore, a finding by the Commission that the Exchange has not met its burden to show that the proposed fee change is consistent with the Act would be different than the Commission's treatment of similar past filings, would create further ambiguity regarding the standards exchange fee changes should satisfy, and is not warranted here.

In addition, the arguments in the SIG Letter do not support their claim that the Exchange has not met its burden to show the proposed rule change is consistent with the Act. Prior to and after submitting the First Proposed Rule Change, the Exchange solicited feedback from its Members, including SIG. SIG relayed their concerns regarding the proposed change. The Exchange then sought to work with SIG to address their concerns and gain a better understanding of the access/connectivity/quoting infrastructure of other exchanges. In response, SIG provided no substantive suggestions on how to amend the First Proposed Rule Change to address their concerns and instead chose to submit a comment letter. One could argue that SIG is using the comment letter process not to raise legitimate regulatory concerns regarding the proposal, but to inhibit or delay proposed fee changes by the Exchange. Nonetheless, the Exchange has further enhanced its cost and revenue analysis and data in this Third [sic] Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Among other things, these enhancements include providing baseline information in the form of data from the month before the Proposed Access Fees became effective.

MIAX Pearl Provided More Than Sufficient Justification for the Proposed Fees

The SIG Letter asserts that the Exchange provided ''no affirmative justifiable reason that its legacy fees are no longer sufficient.'' [85] This statement assumes that the previous fees were ''sufficient'' and does not state how the legacy fees might have been sufficient to cover the Exchange's expenses. As evidenced above, the previous fees were not sufficient to cover the costs the Exchange incurred in providing access to the Exchange. However, the previous fees were sufficient to attract order flow as the pricing was set to not discourage participation on the Exchange. The Exchange is relatively new as it only began operations in 2017.[86] Like other new exchange entrants, the Exchange chose to charge lower fees than other more established exchanges to attract order flow and increase membership.[87] The Exchange chose that approach by setting the price of its Trading Permits (as well as other access-type fees) below market rates. SIG's statement assumes that exchanges should charge at market rates that are sufficient to cover its costs. This statement ignores pricing incentives exchanges may offer to attract order flow and that exchanges, like many businesses including SIG, may make a business decision to price certain offerings at a loss or ''on sale'' as they build their business. Further, a vast majority of the Exchange's Members, if not all, benefited from these lower fees.

As a new entrant in the market, the Exchange chose to forgo any potential additional revenue that may have been generated by higher Trading Permit fees to encourage participation on the new platform. This served to attract participation on the Exchange so market participants could evaluate the Exchange's quality, technology and the quality of their overall customer/user experience. Setting higher rates for non-transaction fees could have served to dissuade market participants from trading on the Exchange and not experiencing the high quality technological system the Exchange built.

Nonetheless, the Exchange provided significant cost based justification for the proposed fees not only in this filing, but also in the First and Second Proposed Rule Changes. The SIG Letter conveniently ignores this fact. In fact, the level of disclosure the Exchange provided in this filing and in the First, Second, and Third Proposed Rule Changes has been worked on with Commission Staff over numerous past filings that have been published for comment and remain effect.[88] The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension.'' [89] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [90]

regarding the Exchange's revenues, costs, and profitability any time more Limited Service MEO Ports become available, in general, (including information regarding the Exchange's methodology for determining the costs and revenues for additional Limited Service MEO Ports). *See* SR–PEARL–2021–20. On May 3, 2021, the Exchange withdrew SR–PEARL–2021–20 and refiled that proposal to further clarify its cost methodology. *See* SR–PEARL–2021–22. On May 10, 2021, the Exchange withdrew SR–PEARL–2021–22 and refiled that proposal as SR–PEARL–2021–23. *See* Securities Exchange Act Release No. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23).

[83] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021.

[84] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the Commission despite less disclosure and justification).

[85] *See* SIG Letter, *supra* note 7.

[86] *See* ''Miami International Holdings Receives Approval from SEC to Launch MIAX PEARL; Targets February 6, 2017 Launch'' (December 14, 2016) *available at https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_12142016.pdf* (last visited October 18, 2021) (stating that the Exchange ''plans to launch with an initial moratorium on most non-transaction fees.'')

[87] *See, e.g.,* ''Members Exchange Unveils Transaction Pricing'' (September 10, 2020), *available at https://www.businesswire.com/news/home/20200910005183/en/Members-Exchange-Unveils-Transaction-Pricing* (last visited October 18, 2021) (quoting Jonathan Kellner, CEO of Members Exchange, ''[t]o further incentivize participants to connect to a new destination, we are implementing initial pricing that generates a net loss for the exchange on each transaction. We are confident that as participants experience the benefits of our platform, they will continue to incorporate MEMX in their routing strategies.''); *and* ''Miami International Holdings Announces Fully Subscribed Strategic Equity Rights Transaction with Leading Equities Firms to Trade on MIAX PEARL Equities Trading to Begin September 25, 2020'' *available at https://www.miaxoptions.com/sites/default/files/press_release-files/Press_Release_09142020.pdf* (last visited October 18, 2021) (quoting Douglas M. Schafer, Jr., Executive Vice President and Chief Information Officer of MIH, MIAX PEARL Equities, ''[w]e are excited to be offering a simpler, transparent, low cost venue to market participants and have no doubt that MIAX PEARL Equities will become a competitive alternative venue following our launch on September 25th.'')

[88] *See supra* note 82.

[89] *See supra* note 83.

[90] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the

Continued

The Exchange believes the proposed fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange provided sufficient transparency into how the Exchange determined to charge such fees. Accordingly, the Exchange provided an analysis of its revenues, costs, and profitability associated with the proposed fees. This analysis included information regarding its methodology for determining the costs and revenues associated with the proposal.

To determine the Exchange's costs to provide the access services associated with the proposed fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the proposed fees.

Furthermore, the Exchange is beginning to see significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems.[91] The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

The Proposed Fee Increases Are Not Part of a Discriminatory Fee Structure and Tiered Fee Structures Are Commonplace Amongst Exchanges

The SIG Letter correctly notes that the proposed Trading Permit fees are higher for Members who connect through the MEO Interface than for Members who connect through the FIX Interface. Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

The SIG Letter asserts that the Exchange ''provides no description of the 'capacity and resources' being utilized, and no information on the nature or extent of the disparity in such utilization between the two Interface types.'' As a MEO user, SIG is uniquely positioned to understand and appreciate the differences between the MEO and FIX interfaces and why rates for the MEO interface are justifiably higher. Nonetheless, the Exchange is providing the below additional data to address the statements made in the SIG Letter.

Orders on the Exchange are supplied by Members via two different interfaces, FIX and MEO. MEO is the Exchange's proprietary binary order interface. Over the period from April 2021 until September 2021, 3.15 billion messages were processed via the FIX interface (0.43% of total messages received). Over that same time period, 731.4 billion messages (99.57% of total messages received) were processed over the MEO interface. Also, the MEO interface allows for mass purging of orders which has a significant impact on the number of messages processed. This marked difference between the number of FIX and MEO messages processed, when mapped to servers, software, storage, and networking results in a much higher allocation of total capital and operational expense to support the MEO interface. For one, the Exchange incurs greater expense in maintaining the resilience of the MEO interface to ensure its ongoing operation in accordance with Regulation SCI. Another, the Exchange must purchase and expand its storage capacity to retain these increased messages in compliance with its record keeping obligations. As noted above, the Exchange has seen significant inflationary pressure on capital items that it needs to purchase to maintain its technology.[92] The Exchange has seen pricing increases upwards of 30% on network equipment due to supply chain shortages.

SIG is also uniquely positioned to know that the fee structure utilized by the Exchange, which charges different Trading Permit fees for MEO interface users than FIX interface users is not a new proposal. In fact, it was first adopted by the Exchange over 3½ years ago in March 2018, published by the Commission and received no comment letters, not even by SIG.[93] SIG claims a fee structure that they have been subject to for years as an MEO interface user is just now unfairly discriminatory.

The Proposed Fees Are in Line With, or Cheaper Than, the Trading Permit Fees or Similar Membership/Access Fees Charged by Other Options Exchanges

The Exchange correctly asserts herein and in the Initial Proposed Fee Change that it's proposed Trading Permit fees ''are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.'' The SIG letter challenges this assertion is an ''apples to oranges'' comparison because NYSE American and NYSE Arca based their rates on the number of options issued to the member and not trading volume, like the exchange does. In fact, the number of options traded by a member of NYSE American or NYSE Arca is an appropriate proxy for trading volume as the more options issued to the member would result in higher volumes traded by that member. Firms that trade more liquid options generate increased message traffic and greater pull on exchange resources. Therefore, comparing options traded to trading volume is an ''apples to apples'' comparison.

The Exchange proposes a range of fees from $500 to $6,000 per month depending on trading volume and the type of interface that is utilized by the Member. These rates are undoubtedly similar to or lower than the rates charged by NYSE Arca and NYSE American. As of December 20, 2021, the Exchange maintained a market share of approximately 4.03%.[94] Among Exchanges with similar market share, the Exchange's proposed Trading Permit Fees remain similar to or lower than fees charged by other options exchanges with comparable market share for access/membership fees.[95] The proposed rates are also lower than those of its affiliates, MIAX and MIAX

Commission despite less disclosure and justification).

[91] *See supra* note 55.

[92] *See id.*

[93] *See supra* note 13.

[94] *See supra* note 77.

[95] *See supra* notes 26–30, and accompanying table. The below market share numbers are as of December 20, 2021. *Id.* Cboe C2 had a market share of 3.72% and charges a monthly Access Fee of $5,000 for market makers and $1,000 per month for an additional Electronic Access Permit regardless of trading volume or options traded. *See supra* note 28. Nasdaq ISE had a market share of 6.95% and charges a monthly Access Fee to Primary Market Makers of $5,000 and Competitive Market Maker of $2,500 regardless of trading volume or options traded. *See supra* note 77.

Emerald, which remain in effect today.[96]

The SIG Letter states that ''[the Exchange] offers no information about the capacity and resource costs of access to the other exchanges or any other basis to support the reasonability of those fees, let alone compare such costs to those of MIAX Pearl.'' [97] This statement is misleading as SIG should be aware that the Exchange does not have access to this information and when it asked SIG to assist the Exchange in better understanding the access structure of other exchanges, SIG refused.

The SIG Letter further asserts that the Exchange ''has not established that the other exchange fees are reasonable, nor that this would mean that the MIAX Pearl fees are reasonable as well.[98] SIG should be aware that it is not the Exchange's obligation to justify why another exchange's fees are reasonable and it is presumed that such fees were deemed reasonable by the Commission when filed by the exchange that proposed said fee. If SIG felt another exchange's fees were or are unreasonable, they are free to share that concern with the Commission and were provided an opportunity to submit comment letter on those earlier proposals from other exchanges. It is the Exchange's responsibility to show that its own proposed fee change is reasonable and consistent with the Act, and that assertion is amply supported by the statements made in this Item 5 and elsewhere herein.

The Proposed Fees Are Consistent With Section 6(b)(4) of the Act Because the Proposed Fees Will Not Result in Excessive Pricing or Supra-Competitive Profit

The Exchange has provided ample data that the proposed fees would not result in excessive pricing or a supra-competitive profit. In this Third [sic] Proposed Rule Change, the Exchange no longer utilizes a comparison of its profit margin to that of other options exchanges as a basis that the Proposed Access Fees are reasonable. Rather, the Exchange has enhanced its cost and revenue analysis and data in this Third [sic] Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Therefore, the Exchange believes it is no longer necessary to respond to this portion of the SIG Letter.

Recoupment of Exchange Infrastructure Costs

Nowhere in this proposal or in the First Proposed Rule Change did the Exchange assert that it benefits competition to allow a new exchange entrant to recoup their infrastructure costs. Rather, the Exchange asserts above that its ''proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.'' The Exchange no longer makes this assertion in this filing and, therefore, does not believe is it necessary to respond to SIG's assertion here.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[99] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[100] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on July 1, 2021, with the proposed fee changes being immediately effective. That proposal, SR–PEARL–2021–32, was published for comment in the **Federal Register** on July 15, 2021.[101] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–PEARL–2021–32) and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[102] On October 12, 2021, the Exchange withdrew SR–PEARL–2021–32. On November 1, 2021, the Exchange filed a proposed rule change proposing fee changes as proposed herein. That proposal, SR–PEARL–2021–54, was published for comment in the **Federal Register** on November 17, 2021.[103] On December 20, 2021, the Exchange withdrew SR–PEARL–2021–54 and filed a proposed rule change proposing fee changes as proposed herein on December 20, 2021. That filing, SR–PEARL–2021–59,[104] was published for comment in the **Federal Register** on January 10, 2022.[105] On February 15, 2022 the Exchange withdrew SR–PEARL–2021–59 and filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[106] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [107]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [108] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers; [109] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[110]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to remove certain credits and

[96] *See* MIAX Fee Schedule, Section 3(b); MIAX Emerald Fee Schedule, Section 3(b).

[97] *See* SIG Letter, *supra* note 7.

[98] *See id.*

[99] 15 U.S.C. 78s(b)(3)(C).

[100] 15 U.S.C. 78s(b)(1).

[101] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32). The Commission received one comment letter on that proposal. Comment for SR–PEARL–2021–32 can be found at: *https://www.sec.gov/comments/sr-pearl-2021-32/srpearl202132.htm.*

[102] *See* Securities Exchange Act Release No. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021).

[103] *See* Securities Exchange Act Release No. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54).

[104] *See* text accompanying *supra* note 10.

[105] *See* Securities Exchange Act Release No. 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR–PEARL–2021–59).

[106] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[107] *Id.*

[108] 15 U.S.C. 78f(b)(4).

[109] 15 U.S.C. 78f(b)(5).

[110] 15 U.S.C. 78f(b)(8).

increase the monthly Trading Permits fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[111]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[112]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[113] and 19(b)(2)(B)[114] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[115] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[116] 6(b)(5),[117] and 6(b)(8)[118] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the Proposed Access Fees are constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative methodology'' that ''strictly considers only those costs that are most clearly directly related to the provision and maintenance of Trading Permits.''[119] Setting forth its costs in providing the Proposed Access Fees, and as summarized in greater detail above, the Exchange projects $844,741 in aggregate annual estimated costs for 2021 as the sum of: (1) $188,815 in third-party expenses paid in total to Equinix (8% of the total applicable expense) for data center services; Zayo Group Holdings, for network services (4% of the total applicable expense); SFTI for connectivity support, Thompson Reuters, NYSE, Nasdaq, and Internap and others (3% of the total applicable expense) for content, connectivity services, and infrastructure services; and various other hardware and software providers (5% of the total applicable expense) supporting the production environment, and (2) $655,925 in internal expenses, allocated to (a) employee compensation and benefit costs ($549,824, approximately 6% of the Exchange's total applicable employee compensation and benefits expense); (b) depreciation and amortization ($66,316, approximately 5% of the Exchange's total applicable depreciation and amortization expense); and (c) occupancy costs ($39,775 approximately 8% of the Exchange's total applicable occupancy expense). Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are most clearly directly associated with providing and maintaining the Proposed Access Fees? The Exchange describes a ''proprietary'' process involving all Exchange department heads, including the finance department and numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders, but do not specify further what principles were applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? For employee compensation and benefit costs, for example, the Exchange calculated an allocation of employee time in several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development, Trade Operations, Finance, and Legal, but do not provide the job titles and salaries of persons whose time was accounted for, or explain the methodology used to determine how much of an employee's time is devoted to that specific activity. What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into Trading Permit costs, including how shared costs are

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[111] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[112] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[113] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[114] 15 U.S.C. 78s(b)(2)(B).

[115] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[116] 15 U.S.C. 78f(b)(4).

[117] 15 U.S.C. 78f(b)(5).

[118] 15 U.S.C. 78f(b)(8).

[119] *See supra* Section II.A.2.

allocated and attributed to Trading Permit expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon? Should the Exchange be required to identify for what services or fees the remaining percentage of un-allocated expenses are attributable to? Do commenters believe that the costs projected for 2021 are generally representative of expected costs going forward (to the extent commenters consider 2021 to be a typical or atypical year), or should an exchange present an estimated range of costs with an explanation of how profit margins could vary along the range of estimated costs? Should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure as the basis for calculating the profit margin of 24%. Do commenters believe this is reasonable? If not, why not? The Exchange states that their proposed fee structure is ''designed to cover its costs with a limited return in excess of such costs,'' and that ''revenue and associated profit margin [ ] are not solely intended to cover the costs associated with providing services subject to the proposed fees,'' and believes that a 24% margin is a limited return over such costs.[120] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of Trading Permits purchased, and that costs may increase. They also state that the number of Trading Permits has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[121] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that they believe are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* Do commenters agree with the Exchange that its expected 24% profit margin would constitute a reasonable rate of return over cost for Trading Permits? If not, what would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for Trading Permits? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for Trading Permits, even at the highest tier, are lower than those of other options exchanges to which the Exchange has compared the Proposed Access Fees? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has addressed whether it believes a material deviation from the anticipated profit margin would warrant the need to make a rule filing pursuant to Section 19(b) of the Act to increase or decrease the fees accordingly, stating that ''[a]ny requirement that an exchange should conduct a periodic re-evaluation on a set timeline of its cost justification and amend its fees accordingly should be established by the Commission holistically, applied to all exchanges and not just pending fee proposals, such as this filing,'' and that ''[i]n order to be fairly applied, such a mandate should be applied to existing market data fees as well.'' [122] In light of the impact that the number of subscribers has on Trading Permit profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based Trading Permit fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new Trading Permit fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a Trading Permit fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Trading Permits.* The Exchange states that proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it launched operations for its Trading Permit fees, and further, that the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV.[123] What are commenters' views on the adequacy of the information the Exchange provides regarding the proposed differentials in fees? Do commenters believe that the proposed price differences are supported by the Exchange's assertions that it set the level of each proposed new fee in a manner that it equitable and not unfairly discriminatory?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [124] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[125] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[126] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[127]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information

[120] *See supra* Section II.A.2.

[121] *See id.*

[122] *See supra* Section II.A.2.

[123] *See id.*

[124] 17 CFR 201.700(b)(3).

[125] *See id.*

[126] *See id.*

[127] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[128]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 18, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 1, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–PEARL–2022–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–05 and should be submitted on or before March 18, 2022. Rebuttal comments should be submitted by April 1, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[129] that File Numbers SR–PEARL–2022–05 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[130]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03965 Filed 2–24–22; 8:45 am]

BILLING CODE 8011–01–P

[128] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[129] 15 U.S.C. 78s(b)(3)(C).

[130] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94284; File No. SR–EMERALD–2022–07]

Self-Regulatory Organizations; MIAX EMERALD, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 18, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to: (i) Modify the application of the per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contract surcharge assessed for Complex Order [3] transactions (the ''Complex surcharge''); and (ii) increase the Complex surcharge for Complex Order transactions in Penny and non-Penny Classes (defined below). The Exchange originally filed this proposal on January 31, 2022 (the ''First Proposed Rule Change'').[4] On February 9, 2022, the Exchange withdrew the First Proposed Rule Change and submitted this filing for immediate effectiveness.

Background

The Exchange currently assesses transaction rebates and fees to all market participants, which are based upon a threshold tier structure (''Tier''). Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member [5] shall apply to all Origin types by the Member, except the Priority Customer [6] Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates' [7] is solely determined by calculation Method 3, as defined in Section 1)a)ii) of the Fee Schedule, titled ''Total Priority Customer, Maker sides volume, based on % of CTCV ('Method 3')." The monthly volume thresholds for each of the methods, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,[8] (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (''CTCV'') (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (''OCC'') in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an ''Exchange System Disruption'' [9] (solely in the option classes of the affected Matching Engine).[10] In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.,* orders on the MIAX Emerald System, will be assessed the specified ''maker'' rebate or fee (each a ''Maker'') and Members that execute against resting liquidity will be assessed the specified ''taker'' fee or rebate (each a ''Taker'').[11] Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program [12] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Program (''non-Penny Classes''), for which Members will be assessed a higher transaction fees and larger rebates.

Proposal To Modify the Application of, and Increase, the Complex Surcharge

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to: (i) Modify the application of the Complex surcharge; and (ii) increase the Complex surcharge for Complex Order transactions in Penny and non-Penny Classes. Currently, the Exchange assesses a fee of $0.86 or $0.88 per contract for all Origins other than Priority Customer for Complex Orders that remove liquidity from the Exchange's Strategy Book [13] in non-Penny Classes, depending on the Origin and Tier achieved. The Exchange also assesses a Complex surcharge of $0.05 per contract for all Origins other than Priority Customer for Complex Orders that remove liquidity from the Strategy Book in non-Penny Classes, which is denoted by footnote ''~'' following the tables in Section 1)a)i) of the Fee Schedule. Currently, the Exchange does not assess a Complex surcharge for Complex Orders that remove liquidity from the Strategy Book in Penny Classes for any Origin.

The Exchange proposes to modify the application of the Complex surcharge in several ways. First, the Exchange proposes that the Complex surcharge will now apply to both Penny and non-Penny Classes, which the Exchange will denote in both the Penny and non-Penny Class tables of transaction fees and rebates in Section 1)a)i) of the Fee Schedule (described further below). Prior to the First Proposed Rule Change, the Complex surcharge applied only to non-Penny Classes. Second, the Exchange proposes that the Complex surcharge will now apply to both liquidity adding (Maker) and liquidity removing (Taker) Complex Orders for all Origins, except the Priority Customer Origin. Prior to the First Proposed Rule Change, the Complex surcharge applied only to liquidity removing (Taker) Complex Orders. Third, the Exchange proposes that the Complex surcharge will apply to Complex Orders submitted as a Response or unrelated quote or

[3] *See* Exchange Rule 518(a)(5) for the definition of Complex Order.

[4] *See* SR–EMERALD–2022–03.

[5] ''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* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100, including Interpretation and Policy .01.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the MIAX Emerald Fee Schedule.

[8] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[9] The term ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. *See* the Definitions Section of the Fee Schedule.

[10] A ''Matching Engine'' is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. *See* the Definitions Section of the Fee Schedule.

[11] For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

[12] *See* Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR–EMERALD–2020–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options) (the ''Penny Program'').

[13] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

order in a Complex Order Auction.[14] Prior to the First Proposed Rule Change, the Complex surcharge applied only to liquidity removing Complex Orders that were not part of a Complex Order Auction. Fourth, the Exchange proposes that the Complex surcharge will apply to Complex Orders that are contra to the Priority Customer Origin only. Prior to the First Proposed Rule Change, the Complex surcharge applied to Complex Orders that were contra to any Origin. Fifth, the Exchange proposes to increase the Complex surcharge from $0.05 per contract to $0.12 per contract. The Exchange notes that the Complex surcharge will continue to not apply to transactions that are Linkage Trades.[15] Additionally, the Exchange notes that the Complex surcharge will not apply to transactions that are paired trades, such as transactions in cPRIME, which the Exchange proposes to explicitly exclude from the Complex surcharge (denoted in a footnote described below). Accordingly, with all of the proposed changes, the proposed Complex surcharge of $0.12 per contract will apply to Complex Orders for all Origins except Priority Customer that add (Maker) or remove (Taker) liquidity in Penny and non-Penny Classes when trading against a Priority Customer on the Strategy Book. The Complex surcharge would continue to not apply to the Priority Customer Origin. The Complex surcharge would also apply to all Origins except Priority Customer when trading against a Priority Customer as a Response or unrelated quote or order in a Complex Order Auction,[16] other than a cPRIME auction.[17] The Exchange notes that the proposed application and amount of the Complex surcharge subject to this filing is the same application and amount of the Complex surcharge that is currently assessed by the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX'').[18] For example, assuming a Firm Origin Complex Order taking liquidity against (contra) a Priority Customer Origin Complex Order resting liquidity in a Penny Class, MIAX will charge a standard fee of $0.47 and a Complex surcharge of $0.12.[19] Similarly, under the proposed fee application and proposed Complex surcharge rate increase, MIAX Emerald would now charge a standard (taker) fee of $0.50 and a Complex surcharge of $0.12.

To represent all the proposed changes, the Exchange proposes to add a new column to each table for Penny and non-Penny Classes in Section 1)a)i) of the Fee Schedule, under the ''Complex'' heading. The Exchange proposes that each new column would be titled ''Per Contract Surcharge for Trading Against a Priority Customer Complex Order.'' [20] In the new column for each table, the Exchange proposes to insert the proposed increased Complex surcharge amount of $0.12 per contract for all Origins, except Priority Customer, which would be $0.00 per contract for all Tiers. The Exchange also proposes to move footnote ''~'' from the ''Taker'' column in the non-Penny Classes table and insert it at the end of each of the newly proposed column headings for the Complex surcharge, described above. Further, the Exchange proposes to delete the text of footnote ''~'' in its entirety and insert the following new text for that footnote following the tables in Section 1)a)i) of the Fee Schedule: ''The per contract surcharge for trading against a Priority Customer Complex Order for Penny and Non-Penny Classes applies to all Origins except Priority Customer when trading against a Priority Customer: (i) On the Strategy Book; or (ii) as a Response or unrelated quote or order in a complex order auction other than a cPRIME Auction.'' [21]

As described above, the Exchange proposes to increase the Complex surcharge from $0.05 per contract to $0.12 per contract. The Exchange notes that the proposed Complex surcharge rate of $0.12 per contract is the same amount charged by at least two competing options exchanges with base fee amounts for complex orders of $0.50 per contract in Penny Classes plus a $0.12 per contract complex surcharge, which has similar application methods.[22] Further, the proposed application and increased amount of the Complex surcharge is the same application and amount of the Complex surcharge that is currently assessed by the Exchange's affiliate, MIAX.[23]

The purpose of the proposed changes to the Complex surcharge are for business and competitive reasons. In order to attract order flow, the Exchange initially set its Complex surcharge rate so that it was similar to, or lower, than other options exchanges that operate comparable maker/taker pricing models.[24] The Exchange now believes that it is appropriate to adjust this rate and application so that it is more in line with other exchanges, but will remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.[25]

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [26] in general, and furthers the objectives of Section 6(b)(4) of the Act,[27] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[28] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

[14] *See* Exchange Rule 518(d) (describing the Complex Order Auction process). The Exchange notes that the Complex surcharge will not apply to Complex Orders submitted as part of a cPRIME auction. A Complex PRIME or ''cPRIME'' Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policy .12. *See* Exchange Rule 518(b)(7). ''cPRIME'' is the process by which a Member may electronically submit a ''cPRIME Order'' (as defined in Exchange Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''), subject to the requirements in Exchange Rule 515A, Interpretation and Policy .12(a). *See, generally,* Exchange Rule 515A.

[15] *See* Exchange Rule 521(j).

[16] *See* Exchange Rule 518(d).

[17] *See supra* note 14.

[18] *See* MIAX Fee Schedule, Sections 1)a)i)–ii) (assessing a $0.12 per contract surcharge for trading against a Priority Customer Complex Order for Penny and Non-Penny classes).

[19] *See* MIAX Fee Schedule, Section 1)a)ii).

[20] This is similar to how the Complex surcharge is represented in the tables of transaction fees and rebates in the MIAX Fee Schedule. *See supra* note 18.

[21] This is substantially similar language regarding the application of the Complex surcharge that is represented by text below the tables of transaction fees and rebates in the MIAX Fee Schedule. *See* MIAX Fee Schedule, Section 1)a)ii), at page 4.

[22] *See* NYSE American Options Fee Schedule, Section I.A., footnote 5, page 9 (assessing $0.12 per contract surcharge to any Electronic Non-Customer Complex Order that executes against a Customer Complex Order, regardless of whether the execution occurs in a Complex Order Auction); BOX Options Exchange Fee Schedule, Section III.A. Complex Order Transaction Fees (noting that a $0.12 per contract Complex Surcharge will be applied to any electronic non-Public Customer Complex Order that executes against an electronic Public Customer Complex Order, including for Penny Interval Class taker fees with a base fee amount of $0.50 per contract).

[23] *See supra* note 18.

[24] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15).

[25] *See supra* notes 18 and 22.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(1) and (b)(5).

general, protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [29]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.[30] Therefore, no exchange possesses significant pricing power. More specifically, as of January 26, 2022, the Exchange had a market share of approximately 3.96% of executed volume of multiply-listed equity and exchange traded fund (''ETF'') options for the month of January 2022.[31]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange's affiliate, MIAX PEARL, LLC (''MIAX Pearl'') filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[32] MIAX Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type (except Priority Customers) will now be subject to the Complex surcharge. The Exchange believes it is equitable and not unfairly discriminatory to increase the Complex surcharge for business and competitive business reasons. The Exchange initially set its Complex surcharge rate similar to, or lower than, the complex surcharges assessed by other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to increase the Complex surcharge so that it is in line with other exchanges, and will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.[33] The Exchange believes that the amount of Complex surcharge, as proposed, will continue to encourage market participants to send Complex Orders to the Exchange.

The Exchange believes the proposal to increase the Complex surcharge and broaden its application is consistent with Section 6(b)(4) of the Act [34] because it applies equally to all market participants (Market Makers, Non-MIAX Market Makers, Firm Proprietary/Broker-Dealers, except Priority Customers) that would be charged such Complex surcharge. Assessing the Complex surcharge to Market Makers and other professional market participants (except Priority Customers), in a broader application, similar to that of other exchanges, is reasonable and not unfairly discriminatory because it will provide Market Makers and other professional market participants with equal surcharges when trading against a Priority Customer Complex Order. As stated above, the proposed Complex surcharge is the same amount as the surcharges assessed by NYSE American Options, BOX Options, and the Exchange's affiliate, MIAX.[35] The Exchange notes that, although the increase of the Complex surcharge represents a slight fee increase, the Exchange believes that this increase is fair and equitable because it is in line with the amount of surcharges assessed on other options exchanges when trading against Priority Customer Complex Orders.[36]

The Exchange believes its proposal to apply the Complex surcharge to all Origins, except Priority Customer, is reasonable, equitably allocated and not unfairly discriminatory because it will continue to encourage Priority Customer Complex Order flow. The Exchange believes increased Priority Customer Complex Order flow benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange also believes that increased Priority Customer Complex Order flow may attract Market Makers and other liquidity providers, thus, facilitating price improvement in the Complex Order Auction process, signaling additional corresponding increase in Complex Order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

The Exchange believes its proposal to broaden the application of the Complex surcharge is also consistent with Section 6(b)(5) of the Act [37] because it perfects the mechanisms of a free and open market and a national market system by aligning the broader application of the Complex surcharge to that of other options exchanges,[38] which will help to create consistency and uniformity in the marketplace.

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.

Intra-Market Competition

The Exchange believes that the proposed changes to the Complex surcharge should continue to encourage the provision of liquidity that enhances the quality of the Exchange's Complex Order market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange also believes that its proposal to apply the Complex surcharge to all Origins except Priority Customer will not impose any burden on competition not necessary or appropriate because the

[29] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[30] *See* ''The Market at a Glance,'' (last visited January 26, 2022), *available at https://www.miaxoptions.com/.*

[31] *See id.*

[32] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

[33] *See supra* notes 18 and 22.

[34] 15 U.S.C. 78f(b)(4).

[35] *See supra* notes 18 and 22.

[36] *See id.*

[37] 15 U.S.C. 78f(b)(1) and (b)(5).

[38] *See supra* note 22.

Exchange believes increased Priority Customer Complex Order flow benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange also believes that increased Priority Customer Complex Order flow may attract Market Makers and other liquidity providers, thus, facilitating price improvement in the Complex Order Auction process, signaling additional corresponding increase in Complex Order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

Inter-Market Competition

The Exchange 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. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.[39] Therefore, no exchange possesses significant pricing power. More specifically, as of January 26, 2022, the Exchange had a market share of approximately 3.96% of executed volume of multiply-listed equity and ETF options for the month of January 2022.[40] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because it modifies the Exchange's fees for Complex Order transactions in a manner that will allow the Exchange to remain competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[41] and Rule 19b–4(f)(2)[42] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–07 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–EMERALD–2022–07. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–07, and should be submitted on or before March 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

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[39] *See supra* note 30.

[40] *See id.*

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b–4(f)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94286; File No. SR–PEARL–2022–04]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

February 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend the fees for the Exchange's MIAX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Express Network Full Service (''MEO'') [3] Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the fees for its Full Service MEO Ports, Bulk and Single (the ''Proposed Access Fees''), which allow Members [4] to submit electronic orders in all products to the Exchange. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change [7] and subsequently suspended the Frist [sic] Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on November 1, 2021, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness (''Third Proposed Rule Change'').[11] The Third Proposed Rule Change was published for comment in the **Federal Register** on January 10, 2022.[12] The Third Proposed Rule Change meaningfully attempted to provide additional justification and explanation for the proposed fee changes, directly respond to the points raised in the single comment letter submitted on the First Proposed Rule Change, and respond to feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Second Proposed Rule Change. Although the Commission again did not receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and now submits this revised proposal for immediate effectiveness (''Fourth Proposed Rule Change''). This Fourth Proposed Rule Change provides additional justification and explanation for the proposed fee changes.

Full Service MEO Port Fee Changes

The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[13] a Full Service MEO Port-Single,[14] and a Limited Service MEO Port.[15] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine [16] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees per matching engine based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) Two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[17] the

[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] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (July 15, 2021) (SR–PEARL–2021–33).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter'').

[8] *See* Securities Exchange Act Release No. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53).

[10] *See id.*

[11] Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58).

[12] *Id.*

[13] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[14] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[15] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[16] A ''Matching Engine'' is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[17] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* Nasdaq Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, Nasdaq PHLX LLC (''Nasdaq Phlx'') and Nasdaq BX, Inc. (''Nasdaq BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option underlyings. Further,

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Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described below. For illustrative purposes and as described in more detail below, the Exchange currently assesses a fee of $5,000 per month for Members that reach the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[18] Beginning with the First Proposed Rule Change, the Exchange proposes to increase Full Service MEO Port fees as further described below, with the highest monthly fee of $10,000 for the Full Service MEO Port—Bulk. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates[19] on the Exchange across all origin types, not including Excluded Contracts,[20] as compared to the Total Consolidated Volume (''TCV''),[21] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees on Members in each month the market participant is credentialed to use a Port in the production environment.

Current Full Service MEO Port—Bulk Fees. Prior to the First Proposed Rule Change, the Exchange assessed Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port—Bulk Fees. Since the First Proposed Rule Change, the Exchange proposes to assess Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

Current Full Service MEO Port—Single Fees. Prior to the First Proposed Rule Change, the Exchange assessed Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port—Single Fees. Since the First Proposed Rule Change, the Exchange proposes to assess Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers[22] or high frequency trading

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the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[18] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[19] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[20] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[21] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[22] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of

firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018 (prior to the First Proposed Rule Change),[23] which are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge fees for their high throughput, low latency MIAX Express Interface (''MEI'') Ports in a similar fashion as the Exchange charges for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[24] This concept is not new or novel. The Exchange also notes that the proposed increased fees for the Exchange's Full Service MEO Ports are in line with, or cheaper than, the similar port fees for similar membership fees charged by other options exchanges.[25]

The Exchange has historically undercharged for Full Service MEO Ports as compared to other options exchanges[26] because the Exchange provides Full Service MEO Ports as a package for a single monthly fee. As described above, this package includes two Full Service MEO Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The Exchange believes other exchanges' port fees are a useful example of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access.

Exchange	Type of port	Monthly fee
MIAX Pearl (as proposed)	MEO Full Service—Bulk	*Tier 1:* $5,000 (or $208.33 per Matching Engine). *Tier 2:* $7,500 (or $312.50 per Matching Engine). *Tier 3:* $10,000 (or $416.66 per Matching Engine).
	MEO Full Service—Single	*Tier 1:* $2,500 (or $104.16 per Matching Engine). *Tier 2:* $3,500 (or $145.83 per Matching Engine). *Tier 3:* $4,500 (or $187.50 per Matching Engine).
NYSE American, LLC (''NYSE American'')[27]	Order/Quote Entry	*Ports 1–40:* $450 each. *Ports 41 or more:* $150 each.
NYSE Arca, Inc. (''NYSE Arca'')[28]	Order/Quote Entry	*Ports 1–40:* $450 each. *Ports 41 or more:* $150 each.
NASDAQ[29]	Specialized Quote Interface	*Ports 1–5:* $1,500 each. *Ports 6–20:* $1,000 each. *Ports 21 or more:* $500.

Implementation

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(4) of the Act[31] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[32] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.''[33] Based on both the BOX Order and the Guidance, the Exchange believes that it has clearly met its burden to demonstrate that the proposed fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and

making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[23] *See supra* note 18.

[24] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[25] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees; NYSE Arca Options Fee Schedule, Port Fees; Nasdaq Stock Market LLC (''NASDAQ''), Options 7, Pricing Schedule, Section 3.

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4) and (5).

[32] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

[33] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX and MIAX Emerald, to adopt or amend non-transaction fees (including port and connectivity fees) and market data fees.[34]

The Proposed Access Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees are reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems the Full Service MEO Port fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements.

In the Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [35] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [36] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [37] The Exchange does not assert that the Proposed Access Fees are constrained by competitive forces. Rather, the Exchange asserts that the Proposed Access Fees are reasonable because they will permit recovery of the Exchange's costs in providing access via Full Service MEO Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [38] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [39] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the Proposed Access Fees are reasonable and do not result in a ''supra-competitive'' [40] profit. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees. As a result of this analysis, the Exchange believes the Proposed Access Fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering Full Service MEO Port access to the Exchange.

The Proposed Access Fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide Full Service MEO Ports, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of Full Service MEO Ports) to estimate such costs,[41] as well as the relative costs of providing and maintaining Full Service MEO Ports, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining Full Service MEO Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port needs and the likely potential for increased costs to procure the third-party services described below.

To determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of access services associated with the Proposed Access Fees. This analysis included discussions with each Exchange department head to determine the expenses that support access services associated with the Proposed Access Fees. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The Exchange reviewed each individual expense to

[34] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05) (proposal to establish market data fees for MIAX Emerald ToM, Administrative Information Subscriber feed, and MIAX Emerald Order Feed); 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01) (proposal to increase connectivity fees); 91460 (April 2, 2021), 86 FR 18349 (SR–EMERALD–2021–11) (proposal to adopt port fees, increase connectivity fees, and increase additional limited service ports); 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (proposal to adopt trading permit fees).

[35] *See* Guidance, *supra* note 33.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] For example, the Exchange only included the costs associated with providing and supporting Full Service MEO Ports and excluded from its cost calculations any cost not directly associated with providing and maintaining such ports. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining Full Service MEO Port access.

determine if such expense was related to the proposed fees. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services for the Proposed Access Fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice.

The internal cost analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of services associated with the proposed fees. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange has historically, and on an ongoing basis, periodically revisits its costs and resource allocations to ensure it is appropriately allocating resources to properly provide services to the Exchange's constituents. Any requirement that an exchange should conduct a periodic re-evaluation on a set timeline of its cost justification and amend its fees accordingly should be established by the Commission holistically, applied to all exchanges and not just pending fee proposals such as this filing. In order to be fairly applied, such a mandate should be applied to existing market data fees as well.

In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. In fact, the detail and analysis provided in this proposed rule change far exceed the level of disclosure provided in other exchange fee filings that have not been suspended by the Commission during its 60-day suspension period. A Commission determination that it is unable to make a finding that this proposed rule change is consistent with the Exchange Act would run contrary to the Commission Staff's treatment of other recent exchange fee proposals that have not been suspended and remain in effect today.[42] For example, a proposed fee filing that closely resembles the Exchange's current filing was submitted in 2020 by the Cboe Exchange, Inc. (''Cboe'') and increased fees for Cboe's 10Gb connections, an access fee.[43] This filing was submitted on September 2, 2020, nearly 15 months after the Staff's Guidance was issued. In that filing, the Cboe stated that the ''proposed changes were not designed with the objective to generate an overall increase in access fee revenue.'' [44] This filing provided no cost based data to support its assertion that the proposal was intended to be revenue neutral. Among other things, Cboe did not provide a description of the costs underlying its provision of 10Gb connections to show that this particular fee did not generate a supra-competitive profit or describe how any potential profit may be offset by increased costs associated with another fee included in its proposal. This filing, nonetheless, was not suspended by the Commission and remains in effect today.

The Exchange notes that the Investors Exchange, Inc. (''IEX'') recently submitted a proposed rule change to adopt fees for two real-time proprietary market data feeds, TOPS and DEEP (''IEX Fee Proposal''). IEX previously provided its TOP and DEEP market data feeds for free and proposed to adopt modest, below market fees. The IEX Fee Proposal included a detailed subscriber data and cost-based analysis in compliance with the Guidance. Nonetheless, on December 30, 2021, the Commission suspended the IEX Fee Proposal and instituted proceedings to determine whether to approve or disapprove the IEX Fee Proposal.[45]

The Commission received three comment letters on the IEX Order.[46] The Virtu Letter and HMA Letter 2 specifically applaud the amount of detail included in the IEX Fee Proposal. Specifically, the Virtu Letter states that ''[i]n significant detail, IEX provides data about three cost components: '(1) direct costs, such as servers, infrastructure, and monitoring; (2) enhancement initiative costs (*e.g.,* new functionality for IEX Data and increased capacity for the proprietary market data feeds); and (3) personnel costs.' '' [47] HMA Letter 2 similarly commends the level of detail included in the IEX Fee Proposal and also highlights the disparate treatment by Commission Staff of exchange fee filings.[48] HMA Letter 2 provides three examples to support this assertion.[49] The Nasdaq Letter urges the Commission to approve the IEX Fee Proposal promptly and raises concern the questions asked by the Commission in the IEX Order imply that they are exercising rate making authority that they clearly do not possess. The Nasdaq Letter states that ''[i]f the Commission believes it has authority to conduct cost-plus ratemaking, the Administrative Procedure Act dictates that it must propose a rule for notice and comment and that its final rule must be prepared

[42] *See, e.g.,* Securities Exchange Act Release Nos. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR–PHLX–2021–58) (increasing several market data fees and adopting new market data fee without providing a cost based justification); 91339 (March 17, 2021), 86 FR 15524 (March 23, 2021) (SR–CboeBZX–2021–020) (increasing fees for a market data product while not providing a cost based justification for the increase); 93293 (October 21, 2021), 86 FR 57716 (October 18, 2021) (SR–PHLX–2021–058) (increasing fees for historical market data while not providing a cost based justification for the increase); 92970 (September 14, 2021), 86 FR 52261 (September 20, 2021) (SR–CboeBZX–2021–047) (adopting fees for a market data related product while not providing a cost based justification for the fees); and 89826 (September 10, 2021), 85 FR 57900 (September 16, 2021) (SR–CBOE–2020–086) (increasing connectivity fees without including a cost based justification).

[43] *See* Securities Exchange Act Release No. 89826 (September 10, 2020), 85 FR 57900 (September 16, 2020) (SR–CBOE–2020–086) (increasing connectivity fees without including a cost based justification).

[44] *See id.* at 57909.

[45] *See* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2021) (SR–IEX–2021–14) (the ''IEX Order'').

[46] *See* letters to Ms. Venessa A. Countryman, Secretary, Commission, from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, Inc., dated January 26, 2022 (the ''Virtu Letter''), Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), dated January 26, 2022 (the ''HMA Letter 2''), and Erika Moore, Vice President and Corporate Secretary, The Nasdaq Stock Market LLC, dated January 27, 2022 (the ''Nasdaq Letter'').

[47] *See* Virtu Letter at page 3, *id.*

[48] HMA previously expressed their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' *See* letter from Tyler Gellasch, Executive Director, HMA, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter 1'').

[49] *See* HMA Letter 2 at 2–3. The Exchange has provided further examples to support HMA's assertion above. *See supra* note 39 and accompanying text.

to withstand judicial scrutiny.'' [50] The Exchange agrees.

The Exchange believes exchanges, like all businesses, should be provided flexibility when allocating costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants. An exchange's costs may also vary based on fees charged by third parties and periodic increases to those fees that may be outside of the control of an exchange.

To determine the Exchange's projected revenues associated with the Proposed Access Fees in the instant filing, the Exchange analyzed the number of Members currently utilizing Full Service MEO Ports, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis projected or estimated future revenue growth or decline for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants and potential increase in internal and third party expenses. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the majority of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services. The Exchange notes that this is the same justification process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed and not suspended by the Commission when MIAX Emerald adopted MEI Port fees.[51]

As outlined in more detail below, the Exchange projects that the final annualized expense for 2021 to provide Full Service MEO Ports to be approximately $897,084 per annum or an average of $74,757 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 20 Full Service MEO Ports, for which the Exchange charged a total of approximately $71,625. This resulted in a loss of $3,132 for that month (a margin of −4.37%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 19 Full Service MEO Ports,[52] for which the Exchange charged a total of approximately $122,000 for that month. This resulted in a profit of $47,243 for that month, representing a profit margin of approximately 38%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to approximately generate a modest profit margin of 38% per-month.[53] The Exchange cautions that this profit margin is likely to fluctuate from month to month based on the uncertainty of predicting how many Full Service MEO Ports may be purchased from month to month as Members and non-Members are able to add and drop ports at any time based on their own business decisions, which they frequently do. This profit margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[54] The Exchange has been subject to price increases upwards of 30% during the past year on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

As mentioned above, the Exchange projects that the final annualized expense for 2021 to provide the services associated with the Proposed Access Fees to be approximately $897,084 per annum or an average of $74,757 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[55] The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its

[50] *See* Nasdaq Letter at page 13, *id.*

[51] *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers) (adopting tiered MEI Port fee structure ranging from $5,000 to $20,500 per month).

[52] The Exchange notes that one Member dropped one Full Service MEO Port–Bulk between June 2021 and November 2021, as a result of the Proposed Access Fees.

[53] The Exchange notes that this profit margin differs from the First and Second Proposed Rule Changes because the Exchange now has the benefit of using a more recent billing cycle under the Proposed Access Fees (November 2021) and comparing it to a baseline month (June 2021) from before the Proposed Access Fees were in effect.

[54] *See* ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, *available at https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); *and* ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, *available at https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[55] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network.

network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide access services associated with the Proposed Access Fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed and indeed is likely to increase rather than decrease over time. The Exchange believes the Proposed Access Fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[56] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems.[57] To do so, the Exchange chose to waive the fees for some non-transaction related services or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[58] the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $897,084, or approximately $74,757 per month. The $897,084 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[59] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[60] The $897,084 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. In performing this calculation, the Exchange considered other services and to which the expense may be applied and how much of the expense is directly or indirectly utilized in providing those other services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $40,166. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[61] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, NASDAQ, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware

[56] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

[57] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[58] The Exchange has not yet finalized its 2021 year end results.

[59] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[60] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[61] In fact, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their SFTI network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. This fee increase by ICE data services, while not subject to Commission review, has material impact on cost to exchanges and other market participants that provide downstream access to other market participants. The Exchange notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to the providing access services in connection with the Proposed Access Fees. Only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 1.80% of the total applicable Equinix expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[62]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 0.90% of the total applicable Zayo expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[63]

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, NASDAQ, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 0.90% of the total applicable SFTI and other service providers' expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[64]

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to

[62] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

[63] *Id.*

[64] *Id.*

providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 0.90% of the total applicable hardware and software provider expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.[65]

Internal Expense Allocations

For 2021, total projected internal expenses relating to the Exchange providing the access services associated with the Proposed Access Fees, is projected to be $856,918. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below.

For clarity, and as stated above, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the access services in connection with the Proposed Access Fees. Only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees. This may result in the Exchange under allocating an expense to the provision of access services in connection with the Proposed Access Fees and such expenses may actually be higher or increase above what the Exchange utilizes within this proposal. Further, as part its ongoing assessment of costs and expenses (described above), the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $783,513, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 8.55% of the total applicable employee compensation and benefits expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[66]

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $64,456, which is only a portion of the $2,864,716[67] total projected expense for depreciation and amortization. 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 and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees. According to the Exchange's calculations, it allocated approximately 2.25% of the total applicable depreciation and amortization expense to providing the services associated with the proposed fees, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[68]

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $8,949, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense

[65] *Id.*

[66] *Id.*

[67] The Exchange notes that the total depreciation expense is different from the total for the Exchange's filing relating to Trading Permits because the Exchange factors in the depreciation of its own internally developed software when assessing costs for Full Service MEO Ports, resulting in a higher depreciation expense number in this filing.

[68] *Id.*

represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network. According to the Exchange's calculations, it allocated approximately 1.80% of the total applicable occupancy expense to providing the services associated with the proposed fees. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.[69]

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Based on the above, the Exchange believes that its provision of access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. As discussed above, the Exchange projects that the annualized expense for 2021 to provide Full Service MEO Ports to be approximately $897,084 per annum or an average of $74,757 per month. The Exchange implemented the Proposed Access Fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the Proposed Access Fees, Members and non-Members purchased a total of 20 Full Service MEO Ports, for which the Exchange charged a total of approximately $71,625. This resulted in a loss of $3,132 for that month (a margin of −4.37%). For the month of November 2021, which includes the Proposed Access Fees, Members and non-Members purchased a total of 19 Full Service MEO Ports, for which the Exchange charged a total of approximately $122,000 for that month. This resulted in a profit of $47,243 for that month, representing a profit margin of 38%. The Exchange believes that the Proposed Access Fees are reasonable because they are designed to generate an approximate profit margin of 38% per-month. The Exchange believes this modest profit margin will allow it to continue to recoup its expenses and continue to invest in its technology infrastructure. Therefore, the Exchange also believes that this proposed profit margin increase is reasonable because it represents a reasonable rate of return.

Again, the Exchange cautions that this profit margin is likely to fluctuate from month to month based in the uncertainty of predicting how many Full Service MEO Ports may be purchased from month to month as Members and non-Members are free to add and drop ports at any time based on their own business decisions. Notwithstanding that the revenue (and profit margin) may vary from month to month due to changes in the number of ports utilized and volume conducted on the Exchange, as well as changes to the Exchange's expenses, the number of ports utilized has not materially changed over previous months. Consequently, the Exchange believes that the months it has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses. This profit margin may also decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems.[70] Accordingly, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Guidance which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. This monthly analysis was also provided in response to comment received on prior submissions of this proposed rule change.

The Exchange reiterates that it only has four primary sources of revenue and cost recovery mechanisms: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. As a result, each of these fees cannot be ''flat'' and cover only the expenses directly related to the fee that is charged. The above revenue and associated profit margin therefore are not solely intended to cover the costs associated with providing services subject to the proposed fees.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide

[69] *Id.*

[70] *See supra* note 54.

the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Proposed Tiered-Pricing Structure Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes the proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it launched operations for its Full Service MEO Port fees. Moreover, the tiered pricing structure for Full Service MEO Ports is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. The proposed tiers of Full Service MEO Port fees will continue to apply to all Members and non-Members in the same manner based upon the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl-listed options. Members and non-Members may choose to purchase more than the two Full Service MEO Ports the Exchange currently provides upfront based on their own business decisions and needs. All similarly situated Members and non-Members would be subject to the same fees. The fees do not depend on any distinction between Members and non-Members because they are solely determined by the individual Members' or non-Members' business needs and their impact on Exchange resources.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to access the Exchange and the amount of the fees are based on the number of Full Service MEO Ports utilized, in addition to the amount of volume conducted on the Exchange. The proposed tiered pricing structure should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.

The proposed tiered-pricing structure is not unfairly discriminatory and provides for the equitable allocation of fees, dues, and other charges because the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV. The higher the volume, the greater pull on Exchange resources. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.

There are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange notes that the firms that purchase more than two Full Service MEO Ports that the Exchange initially provides essentially do so for competitive reasons amongst themselves and choose to utilize numerous ports based on their business needs and desire to attempt to access the market quicker by using the port with the least amount of latency. These firms are generally engaged in sending liquidity removing orders to the Exchange and seek to add more ports so they can access resting liquidity ahead of their competitors. For instance, a Member may have just sent numerous messages and/or orders over one of their Full Service MEO Ports that are in queue to be processed. That same Member then seeks to enter an order to remove liquidity from the Exchange's Book. That Member may choose to send that order over one or more of their other Full Service MEO Ports with less message and/or order traffic to ensure that their liquidity taking order accesses the Exchange quicker because that port's queue is shorter. These firms also tend to frequently add and drop ports mid-month to determine which have the least latency, which results in increased costs to the Exchange to constantly make changes in the data center.

The firms that engage in the above-described liquidity removing and advanced trading strategies typically require more than two Full Service MEO Ports and, therefore, generate higher costs by utilizing more of the Exchange's resources. Those firms may also conduct other latency measurements over their ports and drop and simultaneously add ports mid-month based on their own assessment of their performance. This results in Exchange staff processing such requests, potentially purchasing additional equipment, and performing the necessary network engineering to replace those ports in the data center. Therefore, the Exchange believes it is equitable for these firms to experience increased port costs based on their disproportionate pull on Exchange resources to provide the additional ports.

In addition, the proposed tiered-pricing structure is equitable because it is designed to encourage Members and non-Members to be more efficient and economical when determining how to connect to the Exchange. Section 6(b)(5) of the Exchange Act requires the Exchange to provide access on terms

that are not unfairly discriminatory.[71] As stated above, Full Service MEO Ports are not an unlimited resource and the Exchange's network is limited in the amount of ports it can provide. However, the Exchange must accommodate requests for additional ports and access to the Exchange's System to ensure that the Exchange is able to provide access on non-discriminatory terms and ensure sufficient capacity and headroom in the System. To accommodate requests for additional ports on top of current network capacity constraints, requires that the Exchange purchase additional equipment to satisfy these requests. The Exchange also needs to provide personnel to set up new ports and to maintain those ports on behalf of Members and non-Members. The proposed tiered-pricing structure is equitable because it is designed to encourage Members and non-Members to be more efficient and economical in selecting the amount of ports they request while balancing that against the Exchange's increased expenses when expanding its network to accommodate additional port access.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide ports and port access or their fee markup over those costs, and therefore cannot use other exchanges' port fees as a benchmark to determine a reasonable markup over the costs of providing port access. Nevertheless, the Exchange believes the other exchanges' port fees are a useful example of alternative approaches to providing and charging for port access. To that end, the Exchange believes the proposed tiered-pricing structure for its Full Service MEO Ports is reasonable because the proposed highest tier is still less than or similar to fees charged for similar port access provided by other options exchanges with comparable market shares. For example, NASDAQ (equity options market share of 8.38% as of December 15, 2021 for the month of December)[72] charges $1,500 per port for SQF ports 1–5, $1,000 per SQF port for ports 6–20, and $500 per SQF port for ports 21 and greater,[73] all on a per matching engine basis, with NASDAQ having multiple matching engines.[74] NYSE American (equity options market share of 6.74% as of December 15, 2021 for the month of December)[75] charges $450 per port for order/quote entry ports 1–40 and $150 per port for ports 41 and greater,[76] all on a per matching engine basis, with NYSE American having 17 match engines.[77] The below table further illustrates this comparison.

Exchange	Type of port	Monthly fee
MIAX Pearl (as proposed)	MEO Full Service—Bulk	*Tier 1:* $5,000 (or $208.33 per Matching Engine). *Tier 2:* $7,500 (or $312.50 per Matching Engine). *Tier 3:* $10,000 (or $416.66 per Matching Engine).
	MEO Full Service—Single	*Tier 1:* $2,500 (or $104.16 per Matching Engine). *Tier 2:* $3,500 (or $145.83 per Matching Engine). *Tier 3:* $4,500 (or $187.50 per Matching Engine).
NYSE American	Order/Quote Entry	*Ports 1–40:* $450 each. *Ports 41 or more:* $150 each.
NYSE Arca	Order/Quote Entry	*Ports 1–40:* $450 each. *Ports 41 or more:* $150 each.
NASDAQ	Specialized Quote Interface	*Ports 1–5:* $1,500 each. *Ports 6–20:* $1,000 each. *Ports 21 or more:* $500.

In the each of the above cases, the Exchange's highest tiered port fee, as proposed, is similar to or less than the port fees of competing options exchanges with like market share. Further, as described in more detail below, many competing exchanges generate higher overall operating profit margins and higher ''access fees'' than the Exchange, inclusive of the projected revenues associated with the proposed fees. The Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic system, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive access fees. Each of the port fee rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[78] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[79] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port—Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all

[71] 15 U.S.C. 78f(b)(5).

[72] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited December 15, 2021).

[73] *See supra* note 25.

[74] *See supra* note 17.

[75] *See supra* note 72.

[76] *See supra* note 25.

[77] *See supra* note 17.

[78] *See supra* note 17.

[79] *See supra* note 18.

twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports—Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Pearl have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Pearl. There are a number of large users of the MEO Interface and broker-dealers that are members of other options exchange but not Members of MIAX Pearl. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[80] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

Regrettably, the Exchange believes that the application of the Guidance to date has adversely affected inter-market competition by impeding the ability of smaller, low cost exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services). Since the adoption of the Guidance, and even more so recently, it has become harder, particularly for smaller, low cost exchanges, to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of the affected exchanges' market participants. Although the Guidance has served an important policy goal of improving disclosures in proposed rule changes and requiring exchanges to more clearly justify that their market data and access fee proposals are fair and reasonable, it has also been inconsistently applied and therefore negatively impacted exchanges, and particularly many smaller, low cost exchanges, that seek to adopt or increase fees despite providing enhanced disclosures and rationale to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change[81] and no comment letters on the Second or Third Proposed Rule Changes. The Exchange now responds to the one comment letter in this filing. The SIG Letter cites Rule 700(b)(3) of the Commission's Rules of Fair Practice which places ''the burden to demonstrate that a proposed rule change is consistent with the Act on the self-regulatory organization that proposed the rule change'' and states that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.''[82] The SIG Letter's assertion that the Exchange has not met this burden is without merit, especially considering the overwhelming amounts of revenue and cost information the Exchange included in the First and Second Proposed Rule Changes and this filing.

Until recently, the Exchange has operated at a net annual loss since it launched operations in 2017.[83] As stated above, 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 requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange believes it has achieved this standard in this filing and in the First and Second Proposed Rules Changes. Similar justifications for the proposed fee change included in the First and Second Proposed Rule Changes, but also in this filing, were previously included in similar fee changes filed by the Exchange and its affiliates, MIAX Emerald and MIAX, and SIG did not submit a comment letter on those filings.[84] Those filings

[80] *See supra* note 72.

[81] *See supra* note 7.

[82] 17 CFR 201.700(b)(3).

[83] See *supra* note 56.

[84] *See* Securities Exchange Act Release Nos. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Remove the Cap on the Number of Additional Limited

Continued

were not suspended by the Commission and continue to remain in effect. The justification included in each of the prior filings was the result of numerous withdrawals and re-filings of the proposals to address comments received from Commission Staff over many months. The Exchange and its affiliates have worked diligently with Commission Staff on ensuring the justification included in past fee filings fully supported an assertion that those proposed fee changes were consistent with the Act.[85] The Exchange leveraged its past work with Commission Staff to ensure the justification provided herein and in the First, Second and Third Proposed Rule Changes included the same level of detail (or more) as the prior fee changes that survived Commission scrutiny. The Exchange's detailed disclosures in fee filings have also been applauded by one industry group which noted, ''[the Exchange's] filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension.'' [86] That same industry group also noted their ''worry that the Commission's process for reviewing and evaluating exchange filings may be inconsistently applied.'' [87]

Therefore, a finding by the Commission that the Exchange has not met its burden to show that the proposed fee change is consistent with the Act would be different than the Commission's treatment of similar past filings, would create further ambiguity regarding the standards exchange fee changes should satisfy, and is not warranted here.

In addition, the arguments in the SIG Letter do not support their claim that the Exchange has not met its burden to show the proposed rule change is consistent with the Act. Prior to, and after submitting the First Proposed Rule Change, the Exchange solicited feedback from its Members, including SIG. SIG relayed their concerns regarding the proposed change. The Exchange then sought to work with SIG to address their concerns and gain a better understanding of the access/connectivity/quoting infrastructure of other exchanges. In response, SIG provided no substantive suggestions on how to amend the First Proposed Rule Change to address their concerns and instead chose to submit a comment letter. One could argue that SIG is using the comment letter process not to raise legitimate regulatory concerns regarding the proposal, but to inhibit or delay proposed fee changes by the Exchange.

Nonetheless, the Exchange has enhanced its cost and revenue analysis and data in this Third [sic] Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Among other things, these enhancements include providing baseline information in the form of data from the month before the Proposed Access Fees became effective.

General

First, the SIG Letter states that 10Gb ULL ''lines are critical to Exchange members to be competitive *and to provide essential protection from adverse market events*'' (*emphasis added*).[88] The Exchange notes that this statement is generally not true for Full Service MEO Ports as those ports are used primarily for order entry and not risk protection activities like purging quotes resting on the MIAX Pearl Options Book. Full Service MEO Ports are essentially used for competitive reasons and Members may choose to utilize one or two Full Service MEO Ports [89] based on their business needs and desire to attempt to access the market quicker by using one port that may have less latency. For instance, a Member may have just sent numerous messages and/or orders over one of their Full Service MEO Ports that are in queue to be processed. That same Member then seeks to enter an order to remove liquidity from the Exchange's Book. That Member may choose to send that order over one of their other Full Service MEO Ports with less message and/or order traffic or any of their optional additional Limit Service MEO Ports [90] to ensure that their liquidity taking order accesses the Exchange quicker because that port's queue is shorter.

The Tiered Pricing Structure for Full Service MEO Ports Provides for the Equitable Allocation of Reasonable Dues, Fees, and Other Charges

The SIG Letter challenges the below two bases the Exchange set forth in its Initial Proposed Fee Change and herein to support the assertion that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges:

- ''If the Exchanges were to attempt to establish unreasonable pricing, then no market participant would join or connect to the Exchanges, and existing market participants would disconnect.
- The fees will not result in excessive pricing or supra-competitive profit.'' [91]

The Exchange responds to each of SIG's challenges in turn below.

If the Exchanges Were To Attempt To Establish Unreasonable Pricing, Then No Market Participant Would Join or Connect to the Exchange, and Existing Market Participants Would Disconnect

SIG asserts that ''the prospect that a member may withdraw from the Exchanges if a fee is too costly is not a basis for asserting that the fee is

Service Ports Available to Market Makers); 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers); *and* 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR–MIAX–2021–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers).

[85] *See, e.g.,* Securities Exchange Act Release No. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). *See* Securities Exchange Act Release Nos. 90601 (December 8, 2020), 85 FR 80864 (December 14, 2020) (SR–EMERALD–2020–18) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–11); *and* 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (re-filing with more detail added in response to Commission Staff's feedback and after withdrawing SR–EMERALD–2020–18). The Exchange initially filed a proposal to remove the cap on the number of additional Limited Service MEO Ports available to Members on April 9, 2021. *See* SR–PEARL–2021–17. On April 22, 2021, the Exchange withdrew SR–PEARL–2021–17 and refiled that proposal (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's revenues, costs, and profitability any time more Limited Service MEO Ports become available, in general, (including information regarding the Exchange's methodology for determining the costs and revenues for additional Limited Service MEO Ports). *See* SR–PEARL–2021–20. On May 3, 2021, the Exchange withdrew SR–PEARL–2021–20 and refiled that proposal to further clarify its cost methodology. *See* SR–PEARL–2021–22. On May 10, 2021, the Exchange withdrew SR–PEARL–2021–22 and refiled that proposal as SR–PEARL–2021–23. *See* Securities Exchange Act Release No. 91858 (May 12, 2021), 86 FR 26967 (May 18, 2021) (SR–PEARL–2021–23).

[86] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021.

[87] *Id.* (providing examples where non-transaction fee filings by other exchanges have been permitted to remain effective and not suspended by the Commission despite less disclosure and justification).

[88] *See* SIG Letter, *supra* note 7.

[89] The rates set forth for Full Service MEO Ports under Section 5)d) of the Exchange's Fee Schedule entitle a Member to two (2) Full Service MEO Ports for each Matching Engine for a single monthly fee.

[90] Members may be allocated two (2) Full-Service MEO Ports per Matching Engine and may request Limited Service MEO Ports for which the Exchange will assess no fee for the first two Limited Service MEO Ports requested by the Member. *See* Fee Schedule, Section 5)d).

[91] *See* SIG Letter, *supra* note 7.

reasonable.'' [92] SIG misinterprets the Exchange's argument here. The Exchange provided the examples of firms terminating access to certain markets due to fees to support its assertion that firms, including market makers, are not required to connect to all markets and may drop access if fees become too costly for their business models and alternative or substitute forms of connectivity are available to those firms who choose to terminate access. The Commission Staff Guidance also provides that ''[a] statement that substitute products or services are available to market participants in the relevant market (*e.g.,* equities or options) can demonstrate competitive forces if supported by evidence that substitute products or services exist.'' [93] Nonetheless, the Third [sic] Proposed Rule Change no longer makes this assertion as a basis for the proposed fee change and, therefore, the Exchange believes it is not necessary to respond to this portion of the SIG Letter.

The Proposed Fees Will Not Result in Excessive Pricing or Supra-Competitive Profit

Next, SIG asserts that the Exchange's ''profit margin comparisons do not support the Exchange's claims that they will not realize a supracompetitive profit,'' that ''the Exchanges' respective profit margins of 30% (for MIAX and Pearl) and 51% (for Emerald) in relation to connectivity fees are high in any event,'' and ''comparisons to competing exchanges' overall operating profit margins are an inapt 'apples-to-oranges' comparison.''

The Exchange has provided ample data that the proposed fees would not result in excessive pricing or a supra-competitive profit. In this Third [sic] Proposed Rule Change, the Exchange no longer utilizes a comparison of its profit margin to that of other options exchanges as a basis that the Proposed Access Fees are reasonable. Rather, the Exchange has enhanced its cost and revenue analysis and data in this Third [sic] Proposed Rule Change to further justify that the Proposed Access Fees are reasonable in accordance with the Commission Staff's Guidance. Therefore, the Exchange believes it is no longer necessary to respond to this portion of the SIG Letter.

The Proposed Tiered Pricing Structure Is Not Unfairly Discriminatory

SIG challenges the proposed fees by arguing that ''the Exchange[ ] provide[s] no support for [its] claim that [the] proposed tiered pricing structure is needed to encourage efficiency in connectivity usage and the Exchange[ ] provided no support for [the] claim that the tiered pricing structure allows them to better monitor connectivity usage, nor that this is an appropriate basis for the pricing structure in any event.'' The tiered pricing structure for Full Service MEO Ports is not a new proposal and has been in place since 2018, well prior to the filing of the First Proposed Rule Change. Nonetheless, the Exchange provided additional justification to support that the Proposed Access Fees are equitable and not unfairly discriminatory above in response to SIG's assertions.

Recoupment of Exchange Infrastructure Costs

Nowhere in this proposal or in the First Proposed Rule Change did the Exchange assert that it benefits competition to allow a new exchange entrant to recoup their infrastructure costs. Rather, the Exchange asserts above that its ''proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.'' The Exchange no longer makes this assertion in this filing and, therefore, does not believe it is necessary to respond to SIG's assertion here.

Nonetheless, the Exchange notes that until recently it has operated at a net annual loss since it launched operations in 2017.[94] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the determinism and resiliency of the Exchange's trading systems. To do so, the Exchange chose to offer some non-transaction related services for little to no cost. This resulted in the Exchange forgoing revenue it could have generated from assessing higher fees. Further, a vast majority of the Exchange's Members, if not all, benefited from these lower fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. The SIG Letter chose to ignore this reality and instead criticize the Exchange for initially charging lower fees or providing a moratorium on certain non-transaction fees to the benefit of all market participants. The Exchange is now trying to amend its fee structure to enable it to continue to maintain and improve its overall market and systems while also providing a highly reliable and deterministic trading system to the marketplace.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[95] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[96] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on July 1, 2021, with the proposed fee changes being immediately effective. That proposal, SR–PEARL–2021–33, was published for comment in the **Federal Register** on July 15, 2021.[97] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–PEARL–2021–33) and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[98] On October 12, 2021, the Exchange withdrew SR–PEARL–2021–33. On November 1, 2021, the Exchange filed a proposed rule change proposing fee changes as proposed herein. That proposal, SR–PEARL–2021–53, was published for comment in the **Federal Register** on November 17, 2021.[99] On December 20, 2021, the Exchange withdrew SR–PEARL–2021–53 and filed a proposed rule change proposing fee

[92] *Id.*

[93] *See* Guidance, *supra* note 33.

[94] *See supra* note 56.

[95] 15 U.S.C. 78s(b)(3)(C).

[96] 15 U.S.C. 78s(b)(1).

[97] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (July 15, 2021) (SR–PEARL–2021–33). The Commission received one comment letter on that proposal. Comment for SR–PEARL–2021–33 can be found at: *https://www.sec.gov/comments/sr-pearl-2021-33/srpearl202133-9208443-250011.pdf.*

[98] *See* Securities Exchange Act Release No. 93556 (August 27, 2021), 86 FR 49360 (September 2, 2021).

[99] *See* Securities Exchange Act Release No. 93556 (November 19, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53).

changes as proposed herein on December 20, 2021. That filing, SR–PEARL–2021–58,[100] was published for comment in the **Federal Register** on January 10, 2022.[101] On February 15, 2022, the Exchange withdrew SR–PEARL–2021–58 and filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[102] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [103]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [104] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers; [105] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[106]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to increase the monthly fees for MIAX Express Network Full Service Ports is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[107]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[108]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [109] and 19(b)(2)(B) [110] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[111] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[112] 6(b)(5),[113] and 6(b)(8) [114] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the Proposed Access Fees are constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative methodology'' that ''strictly considers only those costs that are most clearly directly related to the provision and maintenance of the Full Service MEO Ports.'' [115] Setting forth its costs in providing the Proposed Access Fees, and as summarized in greater detail above, the Exchange projects $897,084 in aggregate annual estimated costs for 2021 as the sum of: (1) $40,166 in third-party expenses paid in total to Equinix (1.80% of the total applicable expense) for data center services; Zayo Group Holdings, for network services (0.90% of the total applicable expense); SFTI for connectivity support, Thompson Reuters, NYSE, Nasdaq, and Internap and others (0.90% of the total applicable expense) for content, connectivity services, and infrastructure services; and various other hardware and software providers (0.90% of the total

[100] *See* text accompanying *supra* note 12.

[101] *See* Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58).

[102] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[103] *Id.*

[104] 15 U.S.C. 78f(b)(4).

[105] 15 U.S.C. 78f(b)(5).

[106] 15 U.S.C. 78f(b)(8).

[107] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[108] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[109] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[110] 15 U.S.C. 78s(b)(2)(B).

[111] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[112] 15 U.S.C. 78f(b)(4).

[113] 15 U.S.C. 78f(b)(5).

[114] 15 U.S.C. 78f(b)(8).

[115] *See supra* Section II.A.2.

applicable expense) supporting the production environment, and (2) $856,918 in internal expenses, allocated to (a) employee compensation and benefit costs ($783,513, approximately 8.55% of the Exchange's total applicable employee compensation and benefits expense); (b) depreciation and amortization ($64,456, approximately 2.25% of the Exchange's total applicable depreciation and amortization expense); and (c) occupancy costs ($8,949, approximately 1.80% of the Exchange's total applicable occupancy expense). Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are most clearly directly associated with providing and maintaining the Proposed Access Fees? The Exchange describes a ''proprietary'' process involving all Exchange department heads, including the finance department and numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders, but do not specify further what principles were applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? For employee compensation and benefit costs, for example, the Exchange calculated an allocation of employee time in several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development, Trade Operations, Finance, and Legal, but do not provide the job titles and salaries of persons whose time was accounted for, or explain the methodology used to determine how much of an employee's time is devoted to that specific activity. What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into Full Service MEO Port costs, including how shared costs are allocated and attributed to Full Service MEO Port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon? Should the Exchange be required to identify for what services or fees the remaining percentage of un-allocated expenses are attributable to? Do commenters believe that the costs projected for 2021 are generally representative of expected costs going forward (to the extent commenters consider 2021 to be a typical or atypical year), or should an exchange present an estimated range of costs with an explanation of how profit margins could vary along the range of estimated costs? Should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure as the basis for calculating the profit margin of 38%. Do commenters believe this is reasonable? If not, why not? The Exchange states that their proposed fee structure is ''designed to cover its costs with a limited return in excess of such costs,'' and that ''revenue and associated profit margin [ ] are not solely intended to cover the costs associated with providing services subject to the proposed fees,'' and believes that a 38% margin is a limited return over such costs.[116] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of ports purchased, and that costs may increase. They also state that the number of ports has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[117] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that they believe are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* Do commenters agree with the Exchange that its expected 38% profit margin would constitute a reasonable rate of return over cost for Full Service MEO Ports? If not, what would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for Full Service MEO Ports? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for Full Service MEO Ports, even at the highest tier, are still less than or similar to those of other options exchanges to which the Exchange has compared the Proposed Access Fees? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has addressed whether it believes a material deviation from the anticipated profit margin would warrant the need to make a rule filing pursuant to Section 19(b) of the Act to increase or decrease the fees accordingly, stating that ''[a]ny requirement that an exchange should conduct a periodic re-evaluation on a set timeline of its cost justification and amend its fees accordingly should be established by the Commission holistically, applied to all exchanges and not just pending fee proposals, such as this filing,'' and that ''[i]n order to be fairly applied, such a mandate should be applied to existing market data fees as well.'' [118] In light of the impact that the number of subscribers has on Full Service MEO Port profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based Full Service MEO Port fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new Full Service MEO Port fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a Full Service MEO Port fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Full Service MEO Ports Fees.* The Exchange states that proposed tiered-pricing structure is reasonable, fair, equitable, and not unfairly discriminatory because it is the model adopted by the Exchange when it

[116] *See supra* Section II.A.2.

[117] *See id.*

[118] *See supra* Section II.A.2.

launched operations for its Full Service MEO Port fees, and further, that the amount of the fee is directly related to the Member or non-Member's TCV resulting in higher fees for greater TCV.[119] What are commenters' views on the adequacy of the information the Exchange provides regarding the proposed differentials in fees? Do commenters believe that the proposed price differences are supported by the Exchange's assertions that it set the level of each proposed new fee in a manner that it equitable and not unfairly discriminatory?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [120] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[121] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[122] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[123]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[124]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 18, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 1, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–PEARL–2022–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–04 and should be submitted on or before March 18, 2022. Rebuttal comments should be submitted by April 1, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[125] that File Numbers SR–PEARL–2022–04 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[126]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03964 Filed 2–24–22; 8:45 am]

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[119] *See id.*

[120] 17 CFR 201.700(b)(3).

[121] *See id.*

[122] *See id.*

[123] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[124] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[125] 15 U.S.C. 78s(b)(3)(C).

[126] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94280; File No. SR–ICEEU–2022–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Clearing Stress Testing Policy and CDS Clearing Back-Testing Policy

February 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. 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

ICE Clear Europe proposes to modify certain provisions of its CDS Clearing Stress Testing Policy (''CDS Stress-Testing Policy'') and CDS Clearing Back-Testing Policy (''CDS Back-Testing Policy'') to make certain clarifications and updates.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe 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

(a) Purpose

ICE Clear Europe is proposing to [sic] its CDS Back-Testing Policy and its CDS Stress-Testing Policy to describe more fully certain existing Clearing House practices, as discussed herein.

CDS Back-Testing Policy

The amendments to the CDS Back-Testing Policy would generally clarify the types of back-testing the Clearing House performs of its CDS risk models. The amendments would also make minor terminology updates to conform uses of defined terms, make typographical corrections throughout the document, and add and/or update section names and numbering to improve organization and readability.

The general discussion of the Clearing House's Back-testing approach would be amended to add a new paragraph which would specify that the Clearing House conducts several types of back-tests described in the CDS Back-Testing Policy and that the Clearing House adopts all the available reliable and validated data for each back-test in order to assess the model performance over a long period in which stressed market conditions and idiosyncratic events are likely to have occurred.

A new section would be added (and numbering would be updated accordingly) to describe the use of overlapping and non-overlapping data in the back-testing of the CDS risk model performed by the Clearing House. The section would state explicitly that using non-overlapping back-testing for static portfolios is the preferred approach because the CDS risk model is designed to cover a multi-days risk horizon, but that the lack of sufficiently long data sets may limit the use of the approach. Overlapping back-testing is used in order for the Clearing House to have a statistically significant sample, but the count of exceedances is artificially duplicated. The amendments also would discuss the ways the Clearing House addresses the problem of time dependent observations.

The discussion of the implementation of the Basel Traffic Light System (BTLS) would be updated to state explicitly that one of the main assumptions of BTLS is that excessive losses are time independent. The amendments would describe how, because multi-horizon overlapping back-testing is time dependent, the problem would be addressed by correcting the number of consecutive exceedances within the risk time horizon.

The discussion of Multi-horizon back testing (renamed Multi-days horizon back-testing) would clarify that the observed loss is calculated as the minimum NAV change over 5 days for house accounts. Further clarificatory updates that would be made include specifying that shortfall is also known as ''back-test exceedances'' and that unrealized loss is also known as ''worst N-days P&L''. These updates would be made throughout the CDS Back-Testing Policy in order to be more descriptive and improve readability. The amendments would further reflect that the Clearing House's use of the worst N-days P&L may lead to multiple consecutive back-test exceedances following one large market move in the overlapping back-testing approach.

The discussion of detailed daily back-testing results would be updated to include further explanations of the information presented in Table 2 (Example of the minimum 5-day P/L detail for daily back-testing). Specifically, the amendments would provide that the last two examples in Table 2 shows the worst N-days P/L could be the 4-days P/L or 3-days P/L.

The section relating to back-testing the production model with Clearing Members accounts would be amended to clarify that a minimum of one year of observations is required to define the statistical significance of back-testing results.

Provisions relating to back-testing the production model with Special Strategy portfolios would be updated to describe that the set of portfolios tested include strategies like Index arbitrage portfolios with long Index and short Single Names constituent of the current Index. The strategies would refer to the main Indices where the Clearing House clears part of the underlying Single Names. Additionally, the amendments would provide that back-test results at the 99.5% quantile would be reviewed on at least a monthly basis, and that back-test results at the 99.75% quantile would be reviewed on an ad-hoc basis, when there is a large market move. A table showing portfolio reconstruction for special strategy back-testing would be removed as unnecessary detail now covered in the more general description of the special strategies.

A new section addressing stylized portfolios back-testing would be added and would provide that the Clearing Risk Department would perform back-testing on a series of stylized portfolios when a new risk factor is introduced for clearing. Such stylized portfolios aim at replicating certain trading strategies in order to make sure that the risk related to the newly introduced risk factors can be managed through the current CDS risk model. Stylized portfolios back-testing may be carried out more frequently on the risk factors that [sic] the largest open interest at the Clearing House in order to provide further assurance regarding the CDS risk model performance. The changes reflect current back-testing practice, and are intended to more clearly document such practices in the Back-Testing Policy.

The provisions relating to univariate back-testing would be updated to provide that back-testing results at 99.5% quantile would be reviewed on at least a monthly basis by the Clearing Risk Department and reported to the Model Oversight Committee on a monthly basis, which reflects current practice. Back-testing results at 99.75% quantile would be reviewed on ad-hoc basis, when stress market conditions might cause breaches at 99.5% quantile.

CDS Stress-Testing Policy

In the CDS Stress-Testing Policy, the description of the use of Hypothetical Scenarios would be updated to clarify

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the CDS Clearing Stress Testing Policy and the CDS Clearing Back-Testing Policy (as applicable).

that forward looking credit event scenarios are based on both historically observed and hypothetical extreme but plausible market scenarios. This update is intended to more clearly reflect current stress testing practice.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the CDS Back-Testing Policy and the CDS Stress-Testing Policy are consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The amendments to the CDS Back-Testing Policy are generally designed to enhance and clarify the descriptions of back-testing performed on ICE Clear Europe CDS risk models. Although these changes are largely not intended to represent a change in current Clearing House practices, they are intended to more clearly reflect those practices and thereby enhance the ongoing implementation and monitoring of back-testing. In particular, the amendments clarify the use of overlapping and non-overlapping data sets, the back-testing of stylized portfolios when new risk factors are rolled out, assumptions around time independence of exceedances, and the review process for the 99.75% quantile back tests (including the frequency of review and the Clearing House committees responsible for review). The amendment to the CDS Stress-Testing Policy would clarify the use of hypothetical scenarios in constructing forward looking credit event scenarios in stress testing of the CDS risk model. Therefore, the amendments will help ICE Clear Europe ensure that its risk model will effectively measure credit exposures and default risks, and thus that the Clearing House adequately maintains adequate financial resources to support its CDS operations. The amendments will therefore enhance the stability of the Clearing House and overall promote the prompt and accurate clearance and settlement of securities transactions and, derivative agreements, contracts, and transactions, and the public interest in the sound operation of clearing agencies. Accordingly, the amendments are consistent with the requirements of Section 17A(b)(3)(F).[6] (ICE Clear Europe does not believe the amendments will affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.)

For similar reasons, the proposed amendments are also consistent with relevant requirements of Rule 17Ad–22. ICE Clear Europe believes that the proposed amendments are consistent with the relevant requirements of Rule 17Ad–22(e)(4)(vi)(A),[7] which provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by [. . .] testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements [. . .] by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions'', among other requirements. The amendments to the CDS Stress-Testing Policy clarify that construction of certain forward looking stress scenarios is based on hypothetical as well as historical scenarios. As amended, the CDS Stress-Testing Policy will facilitate the ongoing stress-testing of financial resources and effective management of credit exposures to CDS Clearing Members. As such, the amendments are consistent with the requirements of Rule 17Ad–22(e)(4)(vi)–(B) [sic].[8]

Rule 17Ad–22(e)(6)(vi) [9] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum [. . .] is monitored [sic] on an ongoing basis and is regularly reviewed, tested and verified by (A) conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions; (B) conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of [its] margin resources; (C) conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly; and (D) reporting the results of its analyses . . . to appropriate decision makers . . . .''. The amendments to the CDS Back-Testing Policy will, as discussed above, enhance the framework for ICE Clear Europe to conduct back-testing of CDS risk models by more clearly addressing the use of overlapping and non-overlapping back-testing data sets, the back-testing of stylized portfolios when new risk factors are implemented, and assumptions around time independence of excessive losses, among other changes. The amendments also clarify the procedures for review of back-testing at certain quantiles (on a monthly or ad hoc basis, as appropriate). As such, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(6)(vi).[10]

Rules 17Ad–22(e)(2)(i) and (v) [11] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent [and] specify clear and direct lines of responsibility''. As described herein, references to the roles of certain committees and departments with respect to reviews and approvals throughout the CDS Back-Testing Policy have been updated to reflect existing practice with respect to the roles of groups. As such, the amendments provide additional clarity with respect to Clearing House governance and lines of responsibility consistent with Rules 17Ad–22(e)(2)(i) and (v).[12]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(e)(4)(vi)(A).

[9] 17 CFR 240.17Ad–22(e)(6)(vi).

[10] 17 CFR 240.17Ad–22(e)(6)(vi).

[11] 17 CFR 240.17 Ad–22(e)(2)(i) and (v).

[12] 17 CFR 240.17 Ad–22(e)(2)(i) and (v).

purpose of the Act. In general, the amendments are intended to provide clarifications and additional details where necessary in order to reflect existing practices for CDS stress-testing and back-testing and are not intended to impose new requirements on Clearing Members. The terms of cleared CDS contracts and of clearing are not otherwise changing. As such, the amendments will apply to all CDS Clearing Members and are unlikely, in ICE Clear Europe's view, to materially affect the cost of clearing for CDS products or affect access to clearing for CDS products at ICE Clear Europe or the market for cleared services generally. To the extent the changes could lead to changes in margin rates, based on the results of stress-testing and/or back-testing, ICE Clear Europe believes any such changes would be designed to appropriately reflect its credit risk from CDS Clearing Members with respect to cleared positions. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–004 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–ICEEU–2022–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2022–004 and should be submitted on or before March 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03960 Filed 2–24–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94283; File No. SR–OCC–2022–002]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Options Clearing Corporation's Governance Arrangements

February 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2022, The Options Clearing Corporation (''OCC'' or ''Corporation'') 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 primarily by OCC. 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

This proposed rule change would modify and enhance OCC's governance arrangements. Specifically, OCC is proposing to amend certain of its governing documents by: (i) Clarifying that OCC's Public Directors may not be affiliated with any designated contract market (''DCM'') or futures commission merchant (''FCM''); (ii) allowing the Board of Directors (''Board'') to delegate authority to (a) Board-level committees (''Committees'') to review and approve certain routine initiatives and policies, as well as to authorize certain regulatory filings and (b) an OCC Officer to authorize certain regulatory filings in more limited cases; [3] (iii) removing the portion of Article XI, Section 1 of the By-Laws that allows OCC to deem the affirmative vote or consent of an Exchange Director to be the approval of the stockholder that elected the Exchange Director for By-Law amendments that require stockholder consent; and (iv) applying additional amendments recommended as part of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under OCC's By-Laws, the Board may elect one or more officers as it may from time to time determine are required for the effective management and operation of the Corporation. By-Laws Art. IV § 1. In addition, the Chairman, Chief Executive Officer and Chief Operational Officer each may appoint such officers, in addition to those elected by the Board, and such agents as they each shall deem necessary or appropriate to carry out the functions assigned to them. By-Laws Art. IV § 2.

OCC's annual review of certain governance arrangements.

Proposed amendments to the By-Laws can be found in Exhibit 5A to File No. SR–OCC–2022–002. Proposed amendments to the Board of Directors Charter and Corporate Governance Principles (''Board Charter'') can be found in Exhibit 5B to File No. SR–OCC–2022–002 Proposed amendments to OCC's Fitness Standards for Directors, Clearing Members and Others (''Fitness Standards''), can be found in Exhibit 5C to File No. SR–OCC–2022–002. Proposed amendments to the Audit Committee Charter (''AC Charter''), Compensation and Performance Committee (''CPC'') Charter, Governance and Nominating Committee (''GNC'') Charter, Risk Committee Charter (''RC Charter''), and Technology Committee Charter (''TC Charter'') (collectively, ''Committee Charters'') [4] can be found in Exhibits 5D to 5H to File No. SR–OCC–2022–002, respectively. Material proposed to be added to OCC's By-Laws, Fitness Standards, Board Charter, and Committee Charters, as currently in effect, is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

This proposed rule change would enhance certain OCC governance arrangements. Specifically, OCC is proposing to: (i) Amend OCC's By-Laws, Fitness Standards and Board Charter to clarify that OCC's Public Directors may not be affiliated with any DCM or FCM; (ii) amend OCC's By-Laws, Board Charter, and Committee Charters to enable standing delegation for (a) Committees to review and approve certain routine initiatives and policies, as well as to authorize certain regulatory filings and (b) an OCC officer to authorize certain regulatory filings in more limited cases; (iii) remove the portion of Article XI, Section 1 of the By-Laws that allows OCC to deem the affirmative vote or consent of an Exchange Director to be the approval of the stockholder that elected the Exchange Director for By-Law amendments that require stockholder consent; and (iv) implement other proposed changes to the Board Charter and Committee Charters arising from annual reviews of those governing documents.

Public Director Qualifications

The proposed rule change would amend Sections 6A and 12 of Article III of the By-Laws, the Fitness Standards adopted by the Board thereunder, and the Board Charter to codify OCC's practice of nominating Public Directors who are, in addition to other qualifications, unaffiliated with DCMs and FCMs. Currently, OCC's By-Laws and Fitness Standards preclude individuals from serving as Public Directors who are affiliated with a national securities exchange, national securities association, or a broker or dealer in securities.[6] These restrictions were intended to broaden the mix of viewpoints and business expertise represented on the Board.[7] Subsequent to implementing these restrictions, OCC added futures market clearing memberships and expanded its services to include clearance of futures and futures options.[8] While it has been OCC's practice to nominate Public Directors who are independent from DCMs and FCMs, OCC believes it is appropriate to codify this practice in its By-Laws, Fitness Standards, and Board Charter. OCC believes that the proposal to exclude DCM- or FCM-affiliated Public Directors would serve the same purpose as those restrictions related to national securities exchanges, securities associations, and brokers and dealers—namely, to broaden the mix of viewpoints and business expertise represented on the Board.

Delegated Authority

OCC proposes to amend the Board Charter and Committee Charters to delegate authority from the Board to Committees to review and approve certain routine initiatives and policies. In addition, OCC proposes to amend its By-Laws and Committee Charters to delegate authority to authorize certain regulatory filings to a Committee or, in limited cases, an OCC officer. However, as provided under the current Board Charter, in all instances, the Board would retain the obligation to oversee such delegated activity.

While the Board Charter and Committee Charters delegate many reviews of routine initiatives or policies to Committees, each Committee often must recommend approval of the initiatives or amendments to policies to the Board for final approval or seek delegated authority to approve from the Board on a case-by-case basis. Currently, all regulatory filings are approved by the Board except for changes to OCC's fees, for which the Board has delegated authority to the CPC pursuant to the CPC Charter,[9] and individual filings that the Board delegates to a Committee on a case-by-case basis. The current governance process has several disadvantages, including mandating numerous matters be brought to the full Board for approval that otherwise would not occupy the time and attention of the Board. In addition, requiring Board approval makes it more difficult for OCC to obtain authorization to file regulatory submissions between regularly scheduled Board meetings absent a special Board meeting. In practice, the Board routinely delegates authority to Committees to approve initiatives, policy changes, and rule filings on a case-by-case basis when proposed changes are expected to be ready for Board-level review between regular Board meetings, in part because the Board relies on the business expertise of the directors appointed to the Committees to review and approve proposed changes within the scope of each Committee's responsibilities. The proposal discussed below would create a framework for standing delegated authority to each Committee for the review and approval of certain initiatives and policies, as well as to approve proposed rule changes for

[4] The filing does not propose changes to the Regulatory Committee Charter.

[5] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[6] *See* By-Laws Art. III § 6A & Interpretation and Policy .01.

[7] *See* Securities Exchange Act of 1934 Release (''Exchange Act Release'') No. 30328 (Jan. 31, 1992), 57 FR 4784 (Feb. 7, 1992) (File No. SR–OCC–92–2).

[8] *See* Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283 (June 21, 2001) (File No. SR–OCC–2001–05).

[9] *See* CPC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter* (''The Committee is authorized to review and approve changes in OCC's fees, including authorizing the filing of regulatory submissions related thereto'').

matters within the scope of authority of each Committee. OCC believes that such delegated authority would reduce the number of matters that must be brought before the full Board and promote the more efficient and expeditious filing and implementation of proposed rule changes.

With respect to Committees, the proposal would allow the Board to delegate authority to each Committee to review and approve certain initiatives and policies without the need for separate Board approval. Specifically, OCC would amend the Board Charter and Committee Charters to allow for delegated authority for the Committees to review and approve the following initiatives and policies that currently require Board approval:

Committee	Initiatives and policies
Audit Committee	Evaluation and appointment of an external auditor.
CPC	Review and approval of the: • Corporate performance report (formerly the ''Corporate Plan''); and • annual budget.
GNC	Review and approval of the: • Director Code of Conduct • Related Party Transaction Policy • Board self-evaluation questionnaire.
Risk Committee	Review and approval of: • Risk appetites and risk tolerances • changes to existing models.

Each Committee generally would also have the authority to amend OCC policies filed with the Commission as rules of the clearing corporation for matters that are within the scope of the Committee's responsibilities. With respect to risk management-related policies, OCC would amend the RC Charter by deleting the provisions requiring the committee to recommend changes to certain risk-related policies to the Board for approval—under this proposal, the Risk Committee would be delegated to authorize such regulatory filings. The Board would retain its annual review of OCC's risk management policies, procedures and systems, as required by Rule 17Ad–22(e)(3)(i),[10] but would delegate authority to approve intra-year changes to such policies and procedures to the Risk Committee. Delegated authority would not extend to the authorization of rule changes that would affect OCC policies for which the Board has determined to retain oversight. The Board would retain the authority to revoke delegated authority and limit or modify the scope of such delegated authority, either in whole or in part, by Board resolution.

OCC would also amend the Committee Charters to include among each Committee's functions and responsibilities the authorization of regulatory submissions within the scope of the functions and responsibilities delegated to the Committee.[11] OCC would also amend Article XI, Section 2 of the By-Laws to allow the Board to delegate authority to Committees to authorize the filing of proposed amendments to OCC's Rules. Board approval would continue to be required for filings that would amend By-Laws or Rules that require a supermajority vote of the Board to amend pursuant to Article XI, Section 2 of the By-Laws.

The proposed changes would also allow the Board to delegate authority to an OCC officer to make certain regulatory filings. Such delegated authority would help OCC to more efficiently revise its Rules and rule-filed policies to improve their clarity and ensure their consistency. Factors the Board would consider in delegating such authority to an officer include, but are not limited to, the responsibilities and expertise of the officer to whom authority would be delegated and any limitations on the scope of the delegated authority, including limitations to the subject matter, materiality of the changes, the regulatory approval process required to implement the amendments, and the manner in which the officer must notify the Board or a Committee about filings approved pursuant to such authority. These factors are identified in proposed amendments to the Board Charter. To facilitate this delegated authority, OCC would also amend Section 2 of Article XI of the By-Laws to allow the Board to delegate authority to an officer to authorize regulatory filings that would amend OCC's Rules. OCC anticipates that when implemented, the Board shall delegate authority to the Chief Legal Officer and Chief Regulatory Counsel to authorize regulatory filings that (1) may be filed for immediate effectiveness pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934, as amended (''Exchange Act''),[12] and (2) proposed rule changes that the Chief Legal Officer or Chief Regulatory Counsel determines in his or her discretion constitute clarifications, corrections or minor changes, in each case other than filings that would amend OCC's By-Laws, Rules that require a supermajority vote of the Board to amend pursuant to Article XI, Section 2 of the By-Laws, or rule-filed policies for which the Board has retained oversight vis-à-vis the Committees. In addition, OCC anticipates that when implemented, the Board's delegation of authority will be conditioned on the officers notifying the Board of regulatory filings approved by delegated authority at the next regularly scheduled Board meeting. OCC expects to implement procedures to ensure the Board is so notified.[13] Based on the factors identified above, OCC believes that the Chief Legal Officer and Chief Regulatory Officer have the appropriate responsibility and expertise to identify matters suitable for delegated approval based on the limits imposed with respect to the method of filing the proposed changes under the Exchange Act and the materiality of the proposed changes, and that the obligation to report matters approved pursuant to such authority at the next regular Board meeting will provide the Board with appropriate notice to exercise its oversight function.

By-Law Article XI

OCC is proposing to amend Article XI of the By-Laws to remove the provision

[10] 17 CFR 240.17Ad–22(e)(3)(i).

[11] The Risk Committee Charter currently grants the Risk Committee authority to ''authorize the filing of regulatory submissions pursuant to'' the performance of the responsibilities and functions that the Board shall delegate to the Risk Committee from time to time. *See* Risk Committee Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[12] 15 U.S.C. 78q–1.

[13] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–002 (anticipated changes to OCC procedures concerning internal approvals for regulatory filings).

that allows OCC to treat an Exchange Director's vote as the consent of the stockholder who elected the Exchange Director for those amendments to the By-Laws that require stockholder consent. That provision codified a long-standing understanding between OCC and the stockholders to consider the affirmative vote of each Exchange Director as the approval of the stockholder.[14] To avoid potential conflicts between an Exchange Director's fiduciary duty as a director and the Exchange Director's fiduciary duty to the stockholder, the By-Laws provide that an Exchange Director may disclaim such stockholder consent.[15] It is OCC's current practice to obtain written consent from the stockholders for all matters that require such consent. This proposed rule change would eliminate the outdated authority in OCC's By-Laws to impute an Exchange Director's vote to constitute stockholder consent and better reflect current practice.

Other Amendments to the Board Charter and Corporate Charters

The proposed change would make other housekeeping amendments to the Board Charter and Committee Charters arising from the annual review of OCC's governance arrangements. These proposed amendments are intended to increase consistency across OCC's governance arrangements and to make other conforming changes to improve their clarity and transparency.

Board Charter

This proposed rule change would amend the Board Charter by clarifying that the Board has delegated to Committees the ''oversight'' of specific risks, not the ''management'' of those risks. This proposed change better aligns the Board Charter with the Committee Charters and better distinguishes responsibilities of the Board, Committees, and management. The Board Charter would also be amended to replace reference to ''senior management'' or management in instances where referring to OCC's Management Committee would more clearly delineate OCC's governance structure. The proposed change would also amend the discussion of the Board's mission to more accurately reflect that OCC's services to the industry are not limited to clearance and settlement.[16] The amendments would also clarify that the Board approves ''material,'' rather than ''major,'' changes in auditing and accounting principles and practices. This proposed change would align the Board Charter with language in the AC Charter.

The proposed change would also amend provisions governing the composition of the Board and the Risk Committees to reflect OCC's belief that strong and transparent governance with robust member input on relevant risk issues is necessary to provide effective risk management, consistent with OCC's current practice. Proposed changes to the Board Charter and RC Charter would codify that one of the factors OCC considers when nominating Directors to the Board and Risk Committee is to obtain input from a broad array of market participants on risk management issues. This amendment would align the Board Charter and RC Charter with the By-Laws, which require significant Clearing Member representation on the Board.[17] OCC believes this proposed change is consistent with the recommendation made by certain market participants that central counterparties like OCC have governance practices in place that obtain and address input from a broader array of market participants on risk issues.[18]

In addition, the proposed changes would amend the Board Charter to provide for a minimum of four meetings per year, rather than five. This proposed change would align the Board Charter with the Committee Charters, which generally require at least four meetings each year. The proposed changes would also modify the attendance guidelines to provide that attendance telephonically or by videoconference for meetings scheduled for in-person attendance is discouraged. This proposed change conforms with the current Director Code of Conduct and would be applied to each of the Committee Charters.

The proposed changes would also revise the description of the Conflict of Interest Policy. Specifically, OCC would streamline the discussion by defining ''conflict of interest'' to include actual, potential or apparent conflicts of interest. Accordingly, OCC would remove references to ''potential'' conflicts of interests or matters that may ''be reasonably perceived by others to raise questions about potential conflicts of interest'' because potential or apparent conflicts of interest would now be subsumed by the defined term. These changes would align the Board Charter with the current Director Code of Conduct, which employs the same defined term. The Board Charter's discussion of ethics and conflicts of interest would also be amended to reflect the full title of the Director Code of Conduct and the corporate title for OCC's general counsel. In addition, the Board Charter would be updated to clarify that an Exchange Director's, Member Director's, or Public Director's qualification as independent for purposes of service on the Audit Committee is subject to the assessment of the Board and GNC for other disqualifying material relationships, as provided by the current Board Charter.

The proposed changes would also apply other administrative changes to remove unnecessary verbiage to certain provisions to enhance the clarity and concision of the Board Charter.[19]

AC Charter

The Audit Committee assists the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, OCC's process for monitoring compliance with applicable laws and

[14] *See* Exchange Act Release No. 43630 (Nov. 28, 2000), 65 FR 75991 (Dec. 5, 2000) (File No. SR–OCC–00–05).

[15] *Id.*

[16] For example, OCC provides thought leadership and education to market participants and the public about the prudent use of products that OCC clears.

[17] *See* By-Law Art. III § 1 (providing for nine Member Directors on the Board).

[18] *See* Optimizing Incentives, Resilience and Stability in Central Counterparty Clearing: Perspective on CCP Issues from a Utility Model Clearinghouse at 7–8, *available at https://www.theocc.com/Newsroom/Insights/2020/09-22-Optimizing-Incentives,-Resilience-and-Stabil.*

[19] Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by: Under the ''Mission of the Board'' heading, in the tenth bulleted item describing the Board's oversight role, removing ''such officer'' from ''approving the compensation of each such officer''; under the ''Board Issues'' heading and ''Membership'' subheading: In the first paragraph of the ''Selection of Member Directs and Public Directors'' section, removing ''in order'' in ''retain a search firm in order to assist [the GNC] in these efforts''; in the second paragraph of the same section, replacing ''such annual meeting'' with ''the annual meeting,'' deleting ''as in effect from time to time'' from ''the Director Nomination Procedure as in effect from time to time,'' and deleting the introductory clause beginning the sentence, ''With respect to Member Directors''; in the ''Member Directors Changing Their Employment'' paragraph of the ''Retirement'' section, deleting ''with respect thereto'' and ''requirements of the'' in ''the [GNC] . . . shall recommend to the Board any action to be taken with respect thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Member Director;'' under the ''Board Issues'' heading and ''Conduct'' subheading, the second paragraph of ''Distribution of Materials; Board Presentations'' in the ''Board Meetings'' section, replacing ''summaries/slides of presentations'' with ''materials''; and under the ''Management Structure, Evaluation and Succession'' heading and ''Management Structure'' section, deleting ''what is in'' in the phrase ''the specific needs of the business and what is in the best interest of OCC and the market participants it serves.''

regulation, and OCC's compliance and legal risks.[20] The proposed rule change would amend the discussion of the Audit Committee's functions and responsibilities by adding the Audit Committee's oversight of management's responsibility to ''measure'' compliance and legal risks to conform with the Board Charter, which provides that the Board oversees OCC's processes and frameworks for comprehensively managing such risks. In addition, the proposed changes would provide that the Audit Committee recommends material changes in accounting principles and practices for Board approval, which aligns with the provision in the Board Charter providing that the Board oversees OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of such major (*i.e.,* material) changes.

OCC is also proposing to update the cadence of certain Audit Committee reviews to reflect that the Audit Committee shall conduct the review each regular meeting. The current AC Charter contemplates that the Audit Committee shall conduct certain reviews quarterly based on the assumption that regular meetings will occur quarterly. While it is generally the case that regular meetings are scheduled each quarter, the proposed change would avoid the need to call special meetings to address items on a quarterly cadence if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the end of the last quarter. The cadence of reviews for other certain reports described as ''periodic'' or occurring ''regularly'' would also be amended to reflect that that the review is conducted at each regular meeting of the Audit Committee. Similar changes would be made to the CPC Charter and TC Charter.

OCC is also proposing certain administrative edits to the AC Charter. Reference to the Audit Committee's review of the ''Compliance Policy'' would be changed to the ''Compliance Risk Policy'' to align with the current title of that policy. The proposed change would also modify reference to the General Counsel to reflect that the General Counsel is OCC's Chief Legal Officer. In addition, the proposed change would clarify that in the section addressing competencies of Audit Committee members, ''working familiarity with basic finance and accounting practices'' means ''financial literacy.'' The proposed changes would also remove unnecessary verbiage or otherwise modify the verbiage in certain provisions to enhance the clarity, concision and consistency of the AC Charter with other Committee Charters.[21]

CPC Charter

The Board established the CPC to assist the Board in overseeing general business, regulatory capital, investment, corporate planning, and compensation and human capital risks, as well as executive management succession planning and performance assessment.[22] Consistent with the proposed change to the AC Charter, this proposed rule change would amend the CPC Charter by adding the CPC's oversight of management's responsibility to ''measure'' general business risks, including as they relate to OCC's corporate performance report (formerly the ''Corporate Plan'') and corporate budget, capital requirements, human capital, compensation and benefit programs, management succession planning and management performance assessment processes, arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, to conform with similar language in the Board Charter. With respect to oversight of OCC's human resources programs, the proposed changes would amend the CPC Charter to reflect the CPC's oversight of OCC's diversity, equity and inclusion efforts. OCC believes this change reflects OCC's commitment to recruit, retain and develop high performing, talented and engaged colleagues with diverse backgrounds and perspectives, to nurture an environment where colleagues with varied backgrounds feel included and valued, and to encourage diversity of thought, experiences, and perspectives to develop innovative solutions.

OCC is also proposing certain administrative edits to the CPC Charter. Specifically, OCC would amend the CPC Charter by removing gendered pronouns that assume the Chairman and Chief Executive Officer necessarily will be individuals who identify as male. Similar changes would be applied to the Board Charter and AC Charter. The proposed changes would also provide for CPC oversight of OCC's succession planning for ''critical roles,'' in alignment with terminology in OCC's policies and procedures that address succession planning. In addition, references to the ''Corporate Plan'' would be replaced with references to the ''corporate performance report,'' which better describes the initiative by which the CPC assesses OCC's performance against its corporate goals.

The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modifying the verbiage in certain provisions to enhance the clarity and concision, and consistency of the CPC Charter with other Committee Charters.[23]

GNC Charter

The Board established the GNC to assist the Board in overseeing OCC's corporate governance processes, including assessing the clarity and transparency of OCC's governance arrangements, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests.[24] The proposed changes to the GNC Charter would clarify the Board's expectation that the GNC assist the Board in

[20] *See* AC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[21] Specifically, OCC is proposing to remove unnecessary words and phrases or otherwise modify verbiage by: Under the ''Membership and Organization'' section, (i) in the first paragraph of the ''Composition'' section, abbreviating ''Board of Directors'' and removing extraneous references to the ''full'' Board and ''full Committee membership,'' and (ii) in the first paragraph of the ''Meetings'' section, replacing ''The Committee will'' with ''The Committee shall'' for consistency with the language of similar requirements; and under the ''Functions and Responsibilities'' section, in the ninth bulleted item concerning the Audit Committee's functions and responsibilities in discharging is oversight role, replacing ''at least once in a calendar year'' with ''at least once every calendar year.''

[22] *See* CPC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[23] Specifically, OCC is proposing to remove unnecessary words, phrases or punctuation, or otherwise modify verbiage by: In the ''Membership and Organization'' section, (i) in the first paragraph of the ''Composition'' section, replacing ''The Committee shall consist of'' with ''The Committee shall be comprised of''; and (ii) in the first paragraph of the ''Meetings'' section, replacing ''The Committee will'' with ''The Committee shall'' and deleting ''is'' in the phrase ''as is necessary''; in the ''Authority'' section and ''Scope'' subsection, correcting a reference to ''employees of the OCC,'' which should be ''employees of OCC;'' for the bulleted items discussing the CPC's functions and responsibilities in discharging its oversight role in the ''Functions and Responsibilities'' section: in the fifth bulleted item, deleting the phrase ''with respect thereto''; in the eighth bulleted item replacing ''For each calendar year'' with ''Each calendar year''; and fifteenth bulleted item, replacing ''every two years'' with ''every two calendar years.''

[24] *See* GNC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

reviewing and proposing changes to the Board Charter.

The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modifying the verbiage in certain provisions to enhance the clarity, concision, and consistency of the GNC Charter with other Committee Charters.[25]

RC Charter

The Board established the Risk Committee to assist the Board in overseeing OCC's financial, collateral, risk model and third-party risk management processes, among other responsibilities.[26] Consistent with the foregoing Committee Charter changes, this proposed rule change would amend the RC Charter by adding the committee's oversight of management's responsibility to ''measure'' these risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, which conforms with similar language in the Board Charter. The proposed rule change would also change the minimum number of meetings from six to four to align with the other Committee charters that require a minimum of four meetings each year. In addition, the proposed rule change would consolidate discussion of the Risk Committee's functions and responsibilities with respect to oversight and annual review of OCC's management of liquidity risks and the adequacy of OCC's committed liquidity facilities. This change would streamline the RC Charter's discussion of liquidity risks. OCC would also amend the RC Charter to provide that the Risk Committee shall review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances, consistent with the Board's delegation of authority for such routine reviews and approvals, discussed above.

OCC also proposes certain administrative changes to the RC Charter, including (i) to specify that the Risk Committee recommends changes to OCC's Recovery and Orderly Wind-Down Plan ''for approval,'' consistent with language used with respect to policies for which the Board has retained oversight with respect to amendments; and (ii) to replace ''examinations'' with ''audits'' in the description of the Risk Committee's oversight of internal or external audits of OCC's financial, collateral, risk model and third party risk management processes, consistent with the use of the term ''audit'' elsewhere in that description.

TC Charter

The Board established the Technology Committee to assist the Board in overseeing OCC's information technology (''IT'') strategy and other company-wide operational capabilities.[27] Consistent with the foregoing Committee Charter changes, this proposed rule change would amend the TC Charter by adding the Technology Committee's oversight of management's responsibility to ''measure'' IT and other operational risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility to conform with similar language in the Board Charter. The proposed rule change would also amend the TC Charter to reflect the Technology Committee's current practice of overseeing all security risks, not just information security risks. The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modify the verbiage in certain provisions to enhance the clarity and concision of the TC Charter.[28]

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Exchange Act,[29] and the rules thereunder applicable to OCC. Specifically, Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest.[30] In turn, Rule 17Ad–22(e)(2) under the Exchange Act[31] requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent, clearly prioritize safety and efficiency, support the public interest and the objectives of owners and participants, specify clear and direct lines of responsibility, and consider the interests of other relevant stakeholders. OCC believes the proposed changes discussed above are consistent with Section 17A(b)(3)(F) of the Exchange Act and Rule 17Ad–22(e)(2) for the reasons discussed below.

Public Director Qualifications

OCC believes the proposed changes to codify OCC's practice of nominating Public Directors who are unaffiliated with DCMs and FCMs are consistent with Section 17A(b)(3)(F) of the Exchange Act.[32] Excluding persons affiliated with a DCM or FCM from servicing as Public Directors would serve the same purpose as the current limitations for persons affiliated with national securities exchanges, securities associations, and brokers and dealers—namely, to broaden the mix of viewpoints and business expertise represented on the Board. As the Commission has recognized, diversity within organizations confers many benefits, including to improve decision-making and innovation.[33] As the governing body responsible for the oversight of OCC's activities, such benefits of diversity would aid the Board in exercising its oversight of OCC's clearance and settlement functions to ensure that they are prompt and accurate and that they are structured to protect investors and promote the public interest. Amending OCC's governance arrangements to reflect OCC's current practice also provides better clarity and transparency for the general public into OCC's governance arrangements, thereby promoting the public interest. Accordingly, the proposed change is designed, in general, to promote the prompt and accurate clearance and settlement of securities transactions and

[25] Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by: Under the ''Membership and Organization'' section, in the first paragraph of the ''Composition'' section, (i) replacing ''The Committee will be composed'' with ''The Committee shall be comprised,'' (ii) inserting ''at least'' before the required number of Exchange Director and Member Director membership on the GNC, and (iii) replacing ''The Committee Chair will be designated by the Board from among the Public Director Committee members'' with ''The Chair shall be a Public Director''; and for the bulleted items discussing the GNC's functions and responsibilities in discharging its oversight role in the ''Functions and Responsibilities'' section: in the eleventh bulleted item, replacing ''For each calendar year'' with ''Each calendar year''; and in the thirteenth bulleted item, replacing ''the manner in which'' with ''how.''

[26] *See* RC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[27] *See* TC Charter, *available at https://www.theocc.com/about/corporate-information/board-charter.*

[28] Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by replacing ''The Committee will'' with ''The Committee shall,'' and deleting ''is'' in the phrase ''as is necessary'' in the first paragraph of the ''Meetings'' subsection of the ''Membership and Organization'' section.

[29] 15 U.S.C. 78q–1.

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(2).

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] *See* SEC, Diversity and Inclusion Strategic Plan: Fiscal Years 2020–2022, *available at https://www.sec.gov/files/2020_Diversity_and_Inclusion_Strategic_Plan.pdf.*

protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.[34]

In addition, OCC believes that proposed changes to Article III, Section 6A are consistent with Rule 17Ad–22(e)(2)(i) and (vi).[35] The Commission has stated that while there may be several ways to comply with Rule 17Ad–22(e)(2), a covered clearing agency governance arrangements generally should consider ''whether the major decisions of the covered clearing agency reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders.'' [36] Promoting diversity of viewpoints among OCC's Public Directors outside those already represented on the Board through Exchange and Member Directors helps to ensure that the Board's decisions consider the interests of OCC's direct and indirect participants. Codifying OCC's current practice into its governance arrangements also help ensure that OCC's governance arrangements are clear and transparent. Accordingly, the proposed changes are reasonably designed to be clear and transparent, support the public interest, and consider the interests of relevant stakeholders, in accordance with Rule 17Ad–22(e)(2)(i) and (vi).[37]

Delegated Authority

OCC believes the proposed changes to establish a framework for delegated authority are consistent with Section 17A(b)(3)(F) of the Exchange Act.[38] OCC's rules are the foundation for OCC's clearance and settlement activities and, per the Exchange Act, must be designed to ensure the prompt and accurate clearance and settlement of securities transactions and protect the public interest. Establishing a clear and transparent framework for the efficient delegation of authority from the Board to Committees and officers to approve changes to those rules would facilitate their maintenance and administration, helping to ensure that such rules are capable of facilitating the prompt and accurate clearance and settlement of securities transactions and removing potential impediments thereto. In addition, other clearing agencies have implemented similar delegated authority frameworks.[39] Accordingly, OCC believes the proposed change is designed, in general, to promote the prompt and accurate clearance and settlement of securities transactions and protect the public interest.

In addition, OCC believes the proposed changes to facilitate delegated authority are consistent with Rule 17Ad–22(e)(2).[40] Delegated authority would reduce the number of matters that must be brought before the full Board and promote the more efficient and expeditious filing and implementation of proposed rule changes. With respect to Committees, authority to review and approve certain initiatives and policies, or direct certain regulatory filings, would reside with the applicable Committee that has oversight authority over the subject matter for which the initiatives, policies and proposed changes are associated. OCC believes standing delegated authority to Committees allows for the more efficient operation of OCC for matters that the Board routinely delegates to Committees on a case-by-case basis. With respect to authority delegated to OCC officers, the proposed change would allow the more efficient and expeditious filing of rule filings by authorizing changes to OCC's Rules or rule-filed policies, as the Board may from time to time delegate such authority to such officers. In addition, amending OCC's governance arrangements to facilitate this delegation framework would promote the clarity and transparency of OCC's governance arrangements and ensure that lines of responsibility remain clear and direct, including by amending OCC's By-Laws to allow the Board from time to time to delegate authority to Committees or officers to modify OCC's Rules, amending the Board Charter Committee Charters to identify the matters delegated to Committees, and amending the Board Charter to articulating the factors the Board would consider in delegating authority to an officer. The specific authority employed for a particular rule change would be made apparent in OCC's regulatory filings, which describe how OCC has completed the required actions under its governance arrangements with respect to the filing.[41] Accordingly, OCC believes that these proposed changes are reasonably designed to provide for governance arrangements that are clear and transparent, prioritize safety and efficiency, and specify clear and direct lines of responsibility, in accordance with Rule 17Ad–22(e)(2).[42]

Amendment to By-Law Article XI

OCC believes the proposed change to Article XI of OCC's By-Laws is consistent with Section 17A(b)(3)(F) of the Exchange Act.[43] Article XI governs amendments to OCC's By-Laws and Rules designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest. The proposed amendment will improve the clarity and transparency of the process for amending OCC's By-Laws and Rules by reflecting OCC's current practice of obtaining written stockholder consents for all By-Law amendments that require them, rather than treating an Exchange Director's vote as consent of the stockholder who elected the Exchange Director. OCC believes improving the clarity and transparency of the process for amending its By-Laws and Rules, which are central to OCC's clearance and settlement activities, will, in turn, promote the accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.[44]

In addition, OCC believes the proposed change to Article XI is consistent with Rule 17Ad–22(e)(2).[45] By conforming the By-Laws to reflect current practice, the proposed change would promote the clarity and transparency of OCC's governance arrangements and ensure that OCC's lines of responsibility, vis-à-vis its stockholders, are clear and direct. Accordingly, OCC believes that these proposed changes are reasonably designed to provide for governance arrangements that are clear and transparent, and specify clear and direct lines of responsibility, in accordance with Rule 17Ad–22(e)(2).[46]

Other Amendments to the Board Charter and Committee Charters

OCC believes the proposed changes to the Board Charter and Committee Charters to apply recommendations made as part of OCC's annual review of those governance arrangements are consistent with Section 17A(b)(3)(F) of

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] 17 CFR 240.17Ad–22(e)(2)(i), (vi).

[36] Exchange Act Release No. 93102 (Sept. 22, 2021), 86 FR 53718, 53722 (Sept. 28, 2021) (SR–OCC–2021–007).

[37] *Id.*

[38] 15 U.S.C. 78q–1(b)(3)(F).

[39] *See* Exchange Act Release No. 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (File Nos. SR–DTC–2018–09; SR–FICC–2018–010; SR–NSCC–2018–009) (implementing a similar framework for rule filings by delegated authority for the Depository Trust Company, the Fixed Income Clearing Corporation, and the National Securities Clearing Corporation).

[40] 17 CFR 240.17Ad–22(e)(2).

[41] *See* Form 19b–4 at ''Procedures of the Self-Regulatory Organization,'' *available at https://www.sec.gov/files/form19b-4.pdf.*

[42] *Id.*

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] *Id.*

[45] 17 CFR 240.17Ad–22(e)(2).

[46] *Id.*

the Exchange Act.[47] The Board Charter and Committee Charters are governance arrangements that are designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest by governing the Board and Committee's oversight of OCC's provision of clearance and settlement services. Updating the charters to reflect the Board's determination as to how the Board, Committees and OCC's management should interact will enhance the effectiveness of the Board and Committee's oversight of OCC's clearance and settlement services. Accordingly, OCC believes the proposed changes are designed promote the accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.[48]

In addition, for the reasons described below, OCC believes these proposed amendments increase consistency, accuracy, and transparency across these documents, consistent Rule 17Ad–22(e)(2);[49]

• Amendments to the Board Charter would better align the Board Charter with the Committee Charters and better distinguish responsibilities of the Board, Committees, and management by clarifying that the Board has delegated to Committees the ''oversight'' of specific risks, not the ''management'' of those risks, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[50]

• Further amendments to the Board Charter would replace references to ''senior management'' or ''management'' in instances where a reference to OCC's Management Committee would more clearly delineate OCC's governance structure, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[51]

• Further amendments to the Board Charter and RC Charter would codify that one of the factors OCC considers when nominating Directors to the Board and Risk Committee is to obtain input from a broad array of market participants, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements support the objectives of participants and consider the interests of other relevant stakeholders.[52]

• Further amendments to the Board Charter and Committee Charters would align with the current Director Code of Conduct by (1) modifying the attendance guidelines to provide that attendance telephonically or by videoconference for meetings scheduled for in-person attendance is discouraged and (2) in the case of the Board Charter, revising the description of the Conflict of Interest Policy, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent.[53]

• Amendments to the AC Charter, CPC Charter, RC Charter, and TC Charter to align with language in the Board Charter would clarify each Committee's oversight of management's responsibility to ''measure'' the risks within the scope of those risks that the Board has charged each Committee to assist the Board in overseeing, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent and specify clear and direct lines of responsibility.[54]

• Amendments to the Board Charter and RC Charter would align with other Committee Charters in providing for a minimum of four meetings per year, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent.[55]

• Amendments to the AC Charter, CPC Charter, and TC Charter would align the cadence of certain reviews by and reports to those committees with each regularly scheduled meeting, regardless of whether regularly scheduled meetings occur within each fiscal quarter, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent and specify clear and direct lines of responsibility.[56]

• Amendments to the AC Charter to clarify that the Audit Committee recommends such material changes for Board approval would better delineate the responsibilities between the Board and AC Charter, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[57]

• Amendments to the CPC Charter would include the CPC's oversight of OCC's diversity, equity and inclusion efforts, reflecting OCC's commitment to a diverse and inclusive workplace, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements support the public interest requirements of the Exchange Act and establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[58]

• Further amendments to the CPC Charter would remove gendered pronouns to help ensure the accuracy of the CPC Charter regardless of the gender identity of its senior management or directors, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent.[59]

• Amendments to the GNC Charter would delineate responsibilities between the Board and GNC by providing that in addition to recommending changes to the Committee Charters, as currently provided, the GNC shall also recommend changes to the Board Charter, as appropriate, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[60]

• Amendments to the TC Charter would reflect that the Technology Committee is responsible for overseeing all security risks, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[61]

• Amendments to the RC Charter would reflect the Board's delegation to the Risk Committee to review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances, consistent with Rule 17Ad–22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.[62]

• Other administrative amendments to the Board Charter and Committee Charters would help ensure the continued clarity and transparency of these governing documents and employ consistent language across the Board Charter and Committee Charters, consistent with Rule 17Ad–22(e)(2).[63]

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] *Id.*

[49] 17 CFR 240.17Ad–22(e)(2).

[50] 17 CFR 240.17Ad–22(e)(2)(i).

[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(2)(iii), (vi).

[53] 17 CFR 240.17Ad–22(e)(2)(v).

[54] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[55] 17 CFR 240.17Ad–22(e)(2)(i).

[56] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[57] 17 CFR 240.17Ad–22(e)(2)(v).

[58] 17 CFR 240.17Ad–22(e)(2)(iii), (iv).

[59] 17 CFR 240.17Ad–22(e)(2)(i).

[60] 17 CFR 240.17Ad–22(e)(2)(v).

[61] *Id.*

[62] *Id.*

[63] 17 CFR 240.17Ad–22(e)(2)(i).

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.[64] The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities. Accordingly, OCC does not believe that these proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2022–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2022–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2022–002 and should be submitted on or before March 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03962 Filed 2–24–22; 8:45 am]

BILLING CODE 8011–01–P

[64] 15 U.S.C. 78q–1(b)(3)(I).

[65] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17352 and #17353; KANSAS Disaster Number KS–00149]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Kansas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–4640–DR), dated 02/17/2022.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 12/15/2021.

DATES: Issued on 02/17/2022.

Physical Loan Application Deadline Date: 04/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/17/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Barton, Brown, Clay, Cloud, Doniphan, Edwards, Ellis, Ellsworth, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Lane, Lincoln, Logan, Marshall, Meade, Mitchell, Morris, Morton, Nemaha, Ness, Osborne, Ottawa, Pawnee, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sheridan, Smith, Stafford, Stanton, Stevens,

Sumner, Trego, Wabaunsee, Wallace, Washington, Wichita, Wyandotte.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17352 B and for economic injury is 17353 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–04040 Filed 2–24–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket #FAA–2022–0204]

Notice of Funding Opportunity

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Transportation (DOT), Federal Aviation Administration (FAA) announces the opportunity to apply for approximately $1 billion in FY 2022 discretionary funds for the newly established Airport Terminal Program (ATP), made available under the Infrastructure Investment and Jobs Act of 2021 (IIJA), Public Law 117–58, herein referred to as the Bipartisan Infrastructure Law (BIL). The purpose of the ATP is to make annual grants available to eligible airports for airport terminal development projects that address the aging infrastructure of the nation's airports. In addition, ATP grants will align with DOT's Strategic Framework FY2022–2026 at *www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework.* The FY 2022 ATP will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, Implementation of the Infrastructure Investments and Jobs Act (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

DATES: Airport sponsors that wish to be considered for FY 2022 ATP discretionary funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m. Eastern time, March 28, 2022. Submit applications electronically at *www.faa.gov/bil/airport-terminals* per instructions in this NOFO.

FOR FURTHER INFORMATION CONTACT: BIL Implementation Team, FAA Office of Airports, at our FAA BIL email address: *9-ARP-BILAirports@faa.gov* or Robin K. Hunt at 202–267–3263.

A. Program Description

BIL established the ATP, a competitive discretionary grant program, which provides approximately $1 billion in grant funding annually for five years (Fiscal Years 2022–2026) to upgrade, modernize, and rebuild our nation's airport terminals and sponsor-owned Airport Traffic Control Towers (ATCTs). This includes bringing airport facilities into conformity with current standards; constructing, modifying, or expanding facilities as necessary to meet demonstrated aeronautical demand; enhancing environmental sustainability; encouraging actual and potential competition; and providing a balanced system of airports to meet the roles and functions necessary to support civil aeronautical demand. This program also supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), the FAA encourages applicants to consider how the project will address the challenges faced by individuals in underserved communities and rural areas.

The ATP falls under the project grant authority for the Airport Improvement Program (AIP) in 49 United States Code (U.S.C.) § 47104. Per 2 Code of Federal Regulations (CFR) Part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* the AIP Federal Assistance Listings Number is 20.106, with the objective to assist eligible airports in the development and improvement of a nationwide system that adequately meets the needs of civil aeronautics. The FY 2022 ATP will be implemented, as appropriate and consistent with BIL, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve opportunities for good-paying jobs with the free and fair choice to join a union by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

Consistent with statutory criteria and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), the FAA also seeks to fund projects under the ATP that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, the FAA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and transportation efficient design, support terminal development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable pavement and construction materials as allowable, and reduce pollution.

B. Federal Award Information

The ATP is a $5 billion grant program, distributed as approximately $1 billion annually for five years (Fiscal Years 2022, 2023, 2024, 2025, and 2026), subject to annual allocations limitations based on airport roles found in the published National Plan of Integrated Airport Systems (NPIAS), as updated with current year data. In general, the $5 billion in ATP grant funding is subject to the following annual award allocation limitations: Not more than 55% shall be for large hub airports, not more than 15% shall be for medium hub airports, not more than 20% shall be for small hub airports, and not less than 10% shall be for nonhub and nonprimary airports.

The FAA will consider projects that increase capacity and passenger access; projects that replace aging infrastructure; projects that achieve compliance with the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) and expand accessibility for persons with disabilities; projects that

improve airport access for historically disadvantaged populations; projects that improve energy efficiency, including upgrading environmental systems, upgrading plant facilities, and achieving Leadership in Energy and Environmental Design (LEED) accreditation standards; projects that improve airfield safety through terminal relocation; and projects that encourage actual and potential competition. This includes applicable Executive Orders as listed in Section E.2. Additionally, the FAA will provide preference to projects that complete a development objective, and priority to projects that have received partial awards.

Projects for relocating, reconstructing, repairing, or improving an airport-owned ATCT will also be considered. In addition to the considerations above, these projects will also be evaluated based on overall impact on the national airspace system including age of facility, operational constraints, and nonstandard facilities. The FAA will publish a NOFO annually to announce additional funding made available, approximately $1 billion per year, for Fiscal Years 2023–2026.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are those airport sponsors normally eligible for Airport Improvement Program (AIP) discretionary grants as defined in 49 U.S.C. 47115. This includes a public agency, private entity, state agency, Indian Tribe or Pueblo owning a public-use NPIAS airport, the Secretary of the Interior for Midway Island Airport, the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau.

2. Cost Sharing or Matching

The Federal cost share of ATP grants is 80 percent for large and medium hub airports, and 95 percent for the remainder of airports eligible to receive ATP grants, which includes small hub, nonhub, and nonprimary airports.

3. Project Eligibility

All projects funded from the ATP must be:

i. Airport terminal development, defined in 49 U.S.C. 47102(28) as development of an airport passenger terminal building, including terminal gates; access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building; and walkways that lead directly to or from an airport passenger terminal building. Under the ATP, the FAA may consider projects that qualify as ''terminal development'' (including multimodal terminal development), as that term is defined in 49 U.S.C. 47102(28);

ii. On-airport rail access projects as set forth in Passenger Facility Charge (PFC) Update 75–21 (86 FR 48793, August 31, 2021);

iii. Airport-owned ATCT that includes relocating, reconstructing, repairing, or improving the ATCT; and

iv. Justified based on civil aeronautical demand.

D. Application and Submission Information

1. Address To Request Application Package

An application for ATP terminal or ATCT projects, FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information,* can be found at: *www.faa.gov/bil/airport-terminals.*

Direct all inquiries regarding applications to the appropriate Regional Office (RO) or Airports District Office (ADO). RO/ADO contact information is below: *https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices.* Or to the BIL Team at: *9-ARP-BILAirports@faa.gov.*

2. Content and Form of Application Submission

Applicants will be required to submit information contained in FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information.* This form is provided to assist airports in completing the submission requirements established in this NOFO. Application instructions and the form can be found at: *www.faa.gov/bil/airport-terminals.*

All applications must be submitted electronically following the instruction on the form. Once the form is complete, save a copy of the form electronically to your files for future reference. Next, scroll to the bottom of the form and press the ''submit'' button. The form will be automatically emailed to the FAA BIL Team for review and evaluation, or as a backup, email the form manually to: *9-ARP-BILAirports@faa.gov.*

Applicants selected to receive an ATP grant will then be required to follow AIP grant application procedures prior to award, which include meeting all prerequisites for funding, and submission of Standard Form SF–424, *Application for Federal Assistance,* and FAA Form 5100–100, *Application for Development Projects.*

Airports covered under the FAA's State Block Grant Program should coordinate with their associated state agencies, and submit project application via the procedures noted above.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management.* All applicants must have a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found at the SAM website (currently at *http://www.sam.gov*). Each applicant is required to: (1) Be registered in SAM; (2) provide a valid UEI prior to grant award; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the ATP, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute ATP grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in SAM until the grantee submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

The FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the FAA is ready to make an award, the FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a federal award to another applicant.

Non-federal entities that have received a federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS) *www.fapiis.gov*) to ensure registration information is current and complies with federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Airports that wish to be considered for FY 2022 ATP discretionary funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m.

Eastern time on March 28, 2022. Submit applications electronically at *www.faa.gov/bil/airport-terminals* per instructions in this NOFO.

5. Funding Restrictions

All projects funded from the ATP must be airport terminal development, defined in 49 U.S.C. 47102(28) as development of an airport passenger terminal building, including terminal gates; access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building; and walkways that lead directly to or from an airport passenger terminal building. Under the ATP, the FAA may consider projects that qualify as ''terminal development'' (including multimodal terminal development), as that term is defined in 49 U.S.C. 47102(28); and projects for on-airport rail access projects as set forth in Passenger Facility Charge (PFC) Update 75–21 (86 FR 48793, August 31, 2021).

Additionally, ATP eligible projects include relocating, reconstructing, repairing, or improving an airport-owned ATCT. ATP funds may not be used to support or oppose union organizing.

E. Application Review Information

1. Criteria

Applications for FY 2022 ATP will be rated using the following criteria:

i. Must meet eligibility requirements under the ATP, which includes terminal development (including multimodal terminal development) as defined in 49 U.S.C. 47102(28), on-airport rail access projects, or airport-owned ATCT relocation, reconstruction, repair, or improvements.

ii. Timeliness of implementation, with priority given to those projects that can satisfy all statutory and administrative requirements for grant award in FY 2022.

iii. Favorable consideration will be given to eligible and justified terminal development (including multimodal terminal development), on-airport rail access projects, and ATCT projects that:

a. *Increase capacity and passenger access:* The applicant should describe the extent to which the project contributes to the functioning and growth of the economy, including the extent to which the project addresses congestion or service gaps in rural areas. The applicant should demonstrate how the proposed project increases capacity, provides ongoing market access to the airport by competing carriers as economic and competitive conditions change, as well as how it contributes to the functioning and growth of the economy, including the extent to which the project addresses congestion or service gaps in rural areas. The applicant should demonstrate how the proposed project increases capacity and market access or relieves congestion based on current and/or forecast needs.

b. *Replace aging infrastructure:* Applicants should describe how the project addresses replacing or upgrading facilities that have reached the end of their useful life. This includes information on the current age and condition of the asset that will be affected by the project and how the proposed project will improve asset condition. The applicant should describe how the facility no longer meets the current or forecasted operational needs of the airport. This includes the renovation, expansion, or replacement of a facility that is too small or cannot efficiently meet current or future demand. This also includes projects aimed at terminal modernization or upgrades to meet the changing user or community expectations. This can be met by including multimodal terminal development, climate resiliency, sustainability initiatives and practices incorporated therein, all with the goal of providing a terminal that focuses on the most efficient movement of passengers and baggage possible. This also includes projects that address changing environmental conditions and improve resilience to climate change, and that will be constructed consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law.

c. *Achieve compliance with the Americans with Disabilities Act (ADA), including expand accessibility for persons with disabilities:* Applicants should describe how the project increases mobility, expands access, and improves connectivity for people with disabilities both inside and outside the terminal or ATCT. The information should demonstrate how the proposed project will meet the requirements under the Americans with Disabilities Act and improve equitable access for people with disabilities.

d. *Improve airport access for historically disadvantaged populations:* Applicants should describe how the project increases mobility, expands access, and improves connectivity for historically disadvantaged populations. The information should demonstrate how the proposed project provides a significant local and regional impact and benefits historically disadvantaged populations. The applicant should include a description of public engagement on a local and regional level that has occurred, demonstrates proactive inclusivity of historically disadvantaged communities, and the degree to which public comments and commitments have been integrated into the project. DOT is providing a list of communities that meet the definition of Historically Disadvantaged Communities, available at *https://adip.faa.gov/agis/public/#/disadvantagedCommunities.*

e. *Improve energy efficiency including upgrading environmental systems, upgrading plant facilities, and achieving Leadership in Energy and Environmental Design (LEED) accreditation standards:* Applicants should provide information demonstrating how the proposed project will reduce air pollution and greenhouse gas emissions from a reduction in energy consumption through energy efficient design. This includes how the project may facilitate the airport in achieving LEED accreditation standards through reliance on alternative energy, water use reduction, sustainable site selection and development, responsible materials selection and waste management, incorporating lower-carbon pavement and construction materials, enhanced indoor environmental quality, use of terminal facility for renewable energy production, or other sustainability efforts (*e.g.,* vehicle charging stations attached to the terminal) that further reduce long-term impact on climate. A proposed project, including utility support facilities, should be part of an overall plan that sets targets to lower carbon emissions, working toward a carbon-neutral airport by 2050.

f. *Improve airfield safety through terminal relocation:* Applicants should describe how the proposed terminal project is improving airfield safety through the relocation of the terminal building or its components. This could also include a project to relocate a terminal that assists in addressing nonstandard airfield configurations.

g. *Encourage actual and potential competition:* The applicant should describe the extent to which the project promotes competition in air service by providing greater ability to accommodate new entrants; increasing the ability of competing air carriers to access constrained facilities on an ongoing basis; and facilitating the efficient, and reliable movement of passengers and cargo. The applicant may also wish to describe how the project will offer regional and national impacts by improving the economic strength of regions and cities; increase opportunities for tourism; result in long-term job creation by supporting good-

paying jobs with the free and fair choice to join a union directly related to the project; and help the United States compete in a global economy by encouraging the location of important industries and future innovations and technology in the U.S.

iv. ATCT projects that relocate, reconstruct, repair, or improve an airport-owned ATCT will also be evaluated based on overall impact on the national airspace system including age of facility, operational constraints, and nonstandard facilities.

v. FAA will provide a preference to projects that achieve a complete development objective, even if awards for the project must be phased, and prioritize projects that have received partial awards.

vi. The applicant should describe whether and how project delivery and implementation create good-paying jobs with the free and fair choice to join a union to the greatest extent possible, the use of demonstrated strong labor standards, practices and policies (including for direct employees, contractors, and sub-contractors); use of project labor agreements; distribution of workplace rights notices; the use of Local Hire Provisions; [1] registered apprenticeships; or other similar standards or practices. The applicant should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or Local Hire Provisions,[2] training and placement for underrepresented workers) provide opportunities for all workers, including workers underrepresented in construction jobs to be trained and placed in good-paying jobs directly related to the project. FAA will consider this information in evaluating the application.

2. Review and Selection Process

Applications will be evaluated based on the information submitted related to the above criteria in E.1 to ensure responsiveness to this NOFO and the intent of the ATP. Applicants are encouraged to submit projects that meet as many of the above criteria as possible, but do not need to meet all criteria to be considered. Federal awarding agency personnel will evaluate applications based on how well the projects meet the criteria in E.1, including project eligibility, justification, readiness, and the availability of matching funds. The FAA will also consider projects that advance the goals of the following Executive Orders: The President's January 20, 2021, Executive Order 13990, ''*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*''*;* the President's January 20, 2021, Executive Order 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*''*;* the President's January 27, 2021, Executive Order 14008, ''*Tackling the Climate Crisis at Home and Abroad*''*;* and the President's July 9, 2021, Executive Order 14036, ''*Promoting Competition in the American Economy.*''

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

BIL awards are announced through a Congressional notification process and a DOT Secretary's Notice of Intent to Fund. The FAA RO/ADO representative will contact the airport with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

Costs incurred after enactment of the BIL, November 15, 2021, are eligible for reimbursement under the ATP.

ii. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, found in 49 U.S.C. Chapter 471. Grant recipients are subject to requirements in the FAA's *AIP Grant Agreement* for financial assistance awards; the annual Certifications and Assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.* Grant requirements include, but are not limited to, approved projects on an airport layout plan; and compliance with federal civil rights laws, Buy American requirements under 49 U.S.C. 50101, the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26), Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law No: 117–58, the Infrastructure Investment and Jobs Act, and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5, and reenacted at 40 U.S.C. 3141–3144, 3146, and 3147).

iii. Standard Assurances

Each grant recipient must assure that it will comply with all applicable federal statutes, regulations, executive orders, directives, FAA circulars, and other federal administrative requirements in carrying out any project supported by the ATP grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. The grant recipient understands that federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless the FAA issues a written determination otherwise.

The grant recipient must submit the Certifications at the time of grant application and Assurances must be accepted as part of the grant agreement at the time of accepting a grant offer.

[1] IIJA div. B Section 25019 provides authority to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

[2] Project labor agreement should be consistent with the definition and standards outlined in Executive Order 14063.

Grant recipients must also comply with 2 CFR part 200, which is cited in the grant assurances of the grant agreements. The Airport Sponsor Assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances.*

3. Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the ATP, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at *https://www.faa.gov/airports/aip/grant_payments/media/aip-grant-payment-policy.pdf.*

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200 subpart F Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *Office of Management and Budget (OMB) Guidelines to Agencies on Government wide Debarment and Suspension.*

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact the FAA BIL Implementation Team via email at *9-ARP-BILAirports@faa.gov.* In addition, FAA will post answers to frequently asked questions and requests for clarifications on FAA's website at *www.faa.gov/bil/airport-terminals.* To ensure applicants receive accurate information about eligibility of the program, the applicant is encouraged to contact FAA directly, rather than through intermediaries or third parties, with questions.

All applicants, including those requesting full federal share of eligible projects costs, should have a plan to address potential cost overruns as part of an overall funding plan.

Issued in Washington, DC, on February 22, 2022.

Robin K. Hunt,

Manager, FAA Office of Airports BIL Implementation Team.

[FR Doc. 2022–03998 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Noise Exposure Map Update

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by City of Chicago Department of Aviation for Chicago Midway International Airport seq (Aviation Safety and Noise Abatement Act) are in compliance with applicable requirements.

APPLICABLE DATE: The effective date of the FAA's determination on the noise exposure maps is February 18, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018, Phone: 847–294–7354.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chicago Midway International Airport are in compliance with applicable requirements of Part 150, effective February 18, 2022. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by City of Chicago Department of Aviation. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: Exhibit 3–1 and Exhibit 4–1 of the Part 150 study document. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on February 18, 2022.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The full noise exposure map documentation and of the FAA's evaluation of the maps is available for examination at the *https://www.flychicago.com/community/mdwnoise.*

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, IL, February 22, 2022.

Debra L. Bartell,

Manager, Chicago Airports District Office.

[FR Doc. 2022–04035 Filed 2–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0139]

Accident Reporting: Change to Regulatory Guidance Concerning the Use of the Term ''Medical Treatment''

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of revised regulatory guidance.

SUMMARY: FMCSA announces a revision to its regulatory guidance concerning the use of the term ''medical treatment'' for the purpose of accident reporting. The revised guidance explains that an x-ray examination is a diagnostic procedure and should no longer be considered ''medical treatment'' in determining whether a crash should be included on a motor carrier's accident register.

DATES: This revised guidance is applicable on February 25, 2022 and expires February 25, 2027.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, FMCSA, (202) 366–2722, *richard.clemente@dot.gov.* If you have questions about viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

A. Viewing Documents

To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov* and insert the docket number (FMCSA–2021–0139) in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

I. Background

The Federal Motor Carrier Safety Regulations define *Accident* as an occurrence involving a commercial motor vehicle (CMV) operating on a highway in interstate or intrastate commerce which results in: (1) A fatality, (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles being towed from the scene (49 CFR 390.5T). Regulatory guidance in Question 27 for 49 CFR 390.5 and 390.5T currently considers an x-ray examination and other imaging, such as computed tomography, as medical treatment and reads as follows:

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a ''checkup.['']] Is this considered ''medical treatment,'' making the CMV occurrence an ''accident'' for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription, but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered ''medical treatment,'' making the CMV occurrence [an] ''accident'' for purposes of the Federal Motor Carrier Safety Regulations?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received ''medical treatment'' as that term is used in § 390.5T.

In the second situation, yes. A person who undergoes x-ray examination (or other imaging, such as computed tomography or CT), or is given prescription medication (or the prescription itself), has received ''medical treatment.''

In accordance with 49 CFR 390.15(b), motor carriers are required to maintain an accident register for 3 years after the date of each ''accident.'' A motor carrier's Crash Indicator Behavior Analysis and Safety Improvement Category (BASIC) score illustrates a historical pattern of crash involvement, including frequency and severity. The Crash Indicator BASIC score is based on information from State-reported crashes that meet reportable crash standards.

A petition was submitted to FMCSA requesting a revision to Question 27, stating that an x-ray is a diagnostic test that may find no injury and should not be considered a form of medical treatment. The petitioner suggested that the Agency mirror the Occupational Safety and Health Administration's definition of medical treatment that excludes diagnostic procedures, such as x-rays and blood tests. FMCSA agrees with the revision.

II. Revised Guidance

FMCSA clarifies when a person is considered to have received medical treatment after an accident. FMCSA revises Question 27 under 49 CFR 390.5 and 390.5T, which is available at *https://www.fmcsa.dot.gov/regulations/person-transported-hospital-scene-commercial-motor-vehicle-traffic-accident-one,* as indicated below.[1]

This guidance lacks the force and effect of law, except as incorporated into a contract, and is not meant to bind the public in any way. This guidance document is intended only to provide clarity to the public regarding existing requirements under the law or Agency policies.

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a checkup. Is this considered ''medical treatment,'' making the CMV occurrence an ''accident'' for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered ''medical treatment,'' making the CMV occurrence an ''accident'' for purposes of the FMCSRs?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received ''medical treatment'' as that term is used in 49 CFR 390.5 or 390.5T.

In the second situation, a person who undergoes an x-ray examination (or other imaging, such as computed tomography or CT) has not received ''medical treatment.'' The x-ray examination is a diagnostic procedure but is not considered ''medical treatment.'' However, a person who is given prescription medication (or the prescription itself) has received ''medical treatment.''

IV. Review of the Regulatory Guidance

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1312, 1535 (Dec. 4, 2015), the revised regulatory guidance will be posted in the guidance portal on FMCSA's website, *https://www.fmcsa.dot.gov/guidance.* The Agency will review it no later than 5 years after it is published and consider at that time whether the guidance should be withdrawn, reissued for

[1] The revised guidance applies to both 49 CFR 390.5 and the temporary regulations in 49 CFR 390.5T that are currently in effect. See Unified Registration System; Suspension of Effectiveness, 82 FR 5292, 5310 (Jan. 17, 2017), as amended, 83 FR 22865, 22877 (May 17, 2018).

another period up to 5 years, or incorporated into the Federal Motor Carrier Safety Regulations.

Robin Hutcheson,

Acting Administrator.

[FR Doc. 2022–03997 Filed 2–24–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Coronavirus State and Local Fiscal Recovery Funds Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coronavirus State and Local Fiscal Recovery Funds.

OMB Control Number: 1505–0271.

Type of Review: Extension of a currently approved collection.

Description: Sections 602 and 603 of the Social Security Act (the ''Act''), as added by section 9901 of the American Rescue Plan Act of 2021, Public Law 117–2 (Mar. 11, 2021) authorized the Coronavirus State Fiscal Recovery Fund (''CSFRF'') and Coronavirus Local Fiscal Recovery Fund (''CLFRF'') respectively (referred to as the ''Coronavirus State and Local Fiscal Recovery Funds'' or ''SLFRF''). The Coronavirus State and Local Fiscal Recovery Funds provide $350 billion in total funding for the Department of the Treasury (''Treasury'') to make payments to States (defined to include the District of Columbia), U.S. Territories (defined to include Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Tribes, Metropolitan cities, Counties, Consolidated Governments, and (through States) Non-entitlement units of local government (collectively the ''eligible entities'') to (1) respond to the COVID–19 public health emergency or its negative economic impacts, including providing assistance to households, small business, nonprofits, and impacted industries, such as tourism, travel, and hospitality; (2) respond to workers performing essential work during the COVID–19 pandemic by providing premium pay to eligible workers of the State, U.S. Territory, Tribal government, Metropolitan city, County, or Non-entitlement units of local government who are performing essential work or by providing grants to eligible employers that have eligible workers; (3) provide of government services, to the extent COVID–19 caused a reduction of revenues collected in the most recent full fiscal year of the State, U.S. Territory, Tribal government, Metropolitan city, County, or Non-entitlement units of local government; or (4) make necessary investments in water, sewer, or broadband infrastructure.

Forms: Award and Payment Forms and associated forms; Annual Recovery Performance Plan and Distribution Templates; Project and Expenditure Reports; and Compliance Reports.

Affected Public: State, Territorial, Tribal, and certain Local Governments.

Estimated Number of Respondents: 71,370.

Frequency of Response: Once, Monthly, Quarterly, Annually.

Estimated Total Number of Annual Responses: 77,480.

Estimated Time per Response: 15 minutes to 1 hour for award and payment forms, 5 hours to 100 hours for performance plans and reporting requirements.

Estimated Total Annual Burden Hours: 267,734.

Authority: 44 U.S.C. 3501 *et seq.*

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–04045 Filed 2–24–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before March 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: SS–4, Application for Employer Identification Number, and Form SS–4PR, Solicitud de Numero de Identification Patronal (EIN).

OMB Control Number: 1545–0003.

Type of Review: Extension of a currently approved collection.

Description: Taxpayers who are required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the Internal Revenue Service and the Social Security Administration in tax administration and by the Bureau of the Census for business statistics.

Form Number: Forms SS–4 and SS–4PR.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, federal government, and state, local or tribal governments.

Estimated Number of Respondents: 5,965,735.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 5,965,735.

Estimated Time per Response: 0.33 mins.

Estimated Total Annual Burden Hours: 3,340,812.

2. Title: Life Insurance Statement.

OMB Control Number: 1545–0022.

Type of Review: Extension of a currently approved collection.

Description: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Form Number: Form 712.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 60,000.

Estimated Time per Response: 18 hours, 40 minutes.

Estimated Total Annual Burden Hours: 1,120,200.

3. Title: Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

OMB Control Number: 1545–0064.

Type of Review: Extension of a currently approved collection.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Form Number: Form 4029.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,754.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,754.

Estimated Time per Response: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 3,792.

4. Title: Certain Government Payments.

OMB Control Number: 1545–0120.

Type of Review: Extension of a currently approved collection.

Description: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, reemployment trade adjustment assistance (RTAA) payments, taxable grants, agricultural payments, or for payments received on a Commodity Credit Corporation (CCC) loan.

Form Number: 1099–G.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,900.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 82,364,600.

Estimated Time per Response: 0.3 hours.

Estimated Total Annual Burden Hours: 24,709,380.

5. Title: Investment Credit.

OMB Control Number: 1545–0155.

Type of Review: Extension of a currently approved collection.

Description: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.

Form Number: Form 3468.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,345.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 15,345.

Estimated Time per Response: 34 hours, 7 minutes.

Estimated Total Annual Burden Hours: 545,822.

6. Title: Certain Gambling Winnings.

OMB Control Number: 1545–0238.

Type of Review: Revision of a currently approved collection.

Description: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. The IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

Form Number: Form W–2G.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 14,895,700.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 14,895,700.

Estimated Time per Response: 24 minutes.

Estimated Total Annual Burden Hours: 6,107,237.

7. Title: Claim for Refund of Income Tax Return Preparer Penalties.

OMB Control Number: 1545–0240.

Type of Review: Extension of a currently approved collection.

Description: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Form Number: Form 6118.

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 5,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 5,000.

Estimated Time per Response: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 5,700.

8. Title: Application for Filing Information Returns Electronically (FIRE).

OMB Control Number: 1545–0387.

Type of Review: Revision of a currently approved collection.

Description: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates, and trusts, who is required to file 250 or more information returns must file such returns magnetically or electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.

Form Number: 4419.

Affected Public: Business or other for-profit organizations, non-profit institutions, and Federal, State, local, or tribal governments.

Estimated Number of Respondents: 15,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 15,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 4,950.

9. Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form (Form 4506–A) and Request for a Copy of Exempt Organization IRS Application or Letter (Form 4506–B).

OMB Control Number: 1545–0495.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under

section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting statements, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A, Request for Public Inspection or Copy of Exempt or Political Organization IRS Form and Form 4506–B, Request for a Copy of Exempt Organization IRS Application or Letter, is used to request public inspection or a copy of these forms.

Form Number: 4506–A and 4506–B.

Affected Public: Individuals or households, businesses or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 20,000.

Estimated Time per Response: 58 minutes.

Estimated Total Annual Burden Hours: 19,440.

10. Title: Taxable Fuel; registration.

OMB Control Number: 1545–0725.

Type of Review: Extension of a currently approved collection.

Description: Under IRC section 4101(b) Secretary may require, as a condition of registration under 4101(a), that the applicant give a bond in an amount that the Secretary determines is appropriate. Applicant's that do not meet all the applicable registration tests for Form 637 registration must secure a federal bond, from an acceptable surety or reinsurer listed in Circular 570, prior to receiving a Form 637 registration under section 4101. Form 928 is used for this purpose.

Form Number: 928.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 2.56 hours.

Estimated Total Annual Burden Hours: 1,280.

11. Title: Returns Required on Magnetic Media.

OMB Control Number: 1545–0957.

Type of Review: Extension of a currently approved collection.

Description: Section 6011(e)(2)(A) of the Internal Revenue Code, as amended by Section 7713 of the Revenue Reconciliation Act of 1989, Public Law 101 239 (1989), 103 Stat. 2106, requires certain filers of information returns to report these on magnetic media. Filers who seek relief from this requirement can use Form 8508 to request a waiver for a specific time. After evaluating the request, IRS will notify the taxpayer as to whether the request is approved or denied.

Form Number: Form 8508.

Affected Public: Business or other for-profit organizations, farms, Federal government, and State, local or tribal governments, and Not-for-Profit Organizations.

Estimated Number of Respondents: 1,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 750.

12. Title: Proceeds From Real Estate Transactions.

OMB Control Number: 1545–0997.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 6045(e) and the regulations there under require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099–S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

Form Number: 1099–S.

Affected Public: Business or other-for-profit organizations; and individuals or households.

Estimated Number of Respondents: 122,415.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 4,200,300.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 672,048.

13. Title: Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Control Number: 1545–1049.

Type of Review: Extension of a currently approved collection.

Description: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Form Number: 8725.

Affected Public: Individuals; and business or other for-profit organizations.

Estimated Number of Respondents: 12.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 12.

Estimated Time per Response: 7 hours, 37 minutes.

Estimated Total Annual Burden Hours: 92.

14. Title: Tax Treatment of Salvage and Reinsurance.

OMB Control Number: 1545–1227.

Type of Review: Extension of a currently approved collection.

Description: Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basic by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Form Number: None.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

15. Title: Limitations on Passive Activity Losses and Credits—Treatment of Self-charged Items of Income and Expense.

OMB Control Number: 1545–1244.

Type of Review: Extension of a currently approved collection.

Description: Regulation section 1.469–7(g) permits entities to elect to avoid application of section 1.469–7 in the event the passthrough entity chooses to not have the income from lending transactions with owners of interests in the entity recharacterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Form Number: None.

Affected Public: Individuals or households; and Business or other for-profit.

Estimated Number of Respondents: 1,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 100.

16. Title: Bad Debt Reserves of Banks.

OMB Control Number: 1545–1290.

Type of Review: Extension of a currently approved collection.

Description: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting; or (3) to revoke any elections previously made.

Form Number: None.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 625.

17. Title: Qualified Electric Vehicle Credit.

OMB Control Number: 1545–1374.

Type of Review: Extension of a currently approved collection.

Description: Form 8834 is used to claim any qualified electric vehicle passive activity credit allowed for the current tax year. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Form Number: 8834.

Affected Public: Individuals or households; and businesses or other for-profit organizations.

Estimated Number of Respondents: 3,136.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,136.

Estimated Time per Response: 4 hours, 47 minutes.

Estimated Total Annual Burden Hours: 15,022.

18. Title: Claim for Refund of Excise Taxes.

OMB Control Number: 1545–1420.

Type of Review: Extension of a currently approved collection.

Description: IRC sections 6402, 6404, 6511 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 IRS. Taxpayers use Form 8849 to claim refunds of excise taxes.

Form Number: Form 8849 and Schedules 1,2,3,5,6, and 8.

Affected Public: Individuals or households; and businesses or other for-profit organizations; Not-for-profit institutions; farms; Federal, state, local and tribal governments.

Estimated Number of Respondents: 111,147.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 111,147.

Estimated Time per Response: 8 hours, 31 minutes.

Estimated Total Annual Burden Hours: 946,827.

19. Title: Electronic Federal Tax Payment System (EFTPS).

OMB Control Number: 1545–1467.

Type of Review: Extension of a currently approved collection.

Description: These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

Form Number: Forms 9779, 9783, and 14781.

Affected Public: Individuals; business or other for-profit organizations; and state, local or tribal governments.

Estimated Number of Respondents: 698.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 698.

Estimated Time per Response: 0.17 hours.

Estimated Total Annual Burden Hours: 121.

20. Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections.

OMB Control Number: 1545–1488.

Type of Review: Extension of a currently approved collection.

Description: This final regulation provides the procedures for requesting an extension of time to make certain elections, including changes in accounting method and accounting period. In addition, the regulation provides the standards that the IRS will use in determining whether to grant taxpayers extensions of time to make these elections.

Form Number: None.

Affected Public: Business or other for-profit organizations; individuals; not-for-profit institutions; and farms.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 5,000.

21. Title: Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).

OMB Control Number: 1545–1504.

Type of Review: Extension of a currently approved collection.

Description: Form 911 is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer resides.

Form Number: Form 911 and 911(SP).

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; farms; and state, local or tribal governments.

Estimated Number of Respondents: 93,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 93,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

22. Title: Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

OMB Control Number: 1545–1641.

Type of Review: Extension of a currently approved collection.

Description: The revenue procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under Sec. 475(e) or (f) of the Internal Revenue Code. The collections of information of this revenue procedure are required by the

IRS in order to facilitate monitoring taxpayers changing accounting methods resulting from making the elections under Sec. 475(e) or (f).

Revenue Procedure Number: 99–17 (Revenue Procedure 99–17 is modified by Revenue Procedure 99–49.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 500.

23. Title: Combined Information Reporting.

OMB Control Number: 1545–1667.

Type of Review: Extension of a currently approved collection.

Description: Revenue Procedure 99–50 permits combined information reporting by a successor business entity (*i.e.,* a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. Combined information reporting may be elected by a successor with respect to certain Forms 1042–S and all forms in series 1098, 1099, and 5498. The procedures also apply to Forms 1097, 3921, 3922, and W–2G. The successor must file a statement with the IRS indicating what forms are being filed on a combined basis.

Form Number: None.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 6,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 6,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 500.

24. Title: Amortization of Intangible Property.

OMB Control Number: 1545–1671.

Type of Review: Extension of a currently approved collection.

Description: These regulations apply to property acquired after January 25, 2000. Regulations to implement section 197(e)(4)(D) are applicable August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, for property acquired after July 25, 1991, if a valid retroactive election has been made under § 1.197–1).

Form Number: None.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 1,500.

25. Title: Guidance on Reporting Interest Paid to Nonresident Aliens.

OMB Control Number: 1545–1725.

Type of Review: Extension of a currently approved collection.

Description: This document contains final regulations that provide guidance on the reporting requirements for interest on deposits maintained at the U.S. office of certain financial institutions and paid to nonresident alien individuals. These proposed regulations affect persons making payments of interest with respect to such a deposit.

Form Number: None.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 500.

26. Title: Interest Rates and Appropriate Foreign Loss Payment Patterns for Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(f).

OMB Control Number: 1545–1799.

Type of Review: Extension of a currently approved collection.

Description: Notice 2002–69 (2002–43 I.R.B. 730) published October 28, 2002, provides interim guidance for determining the interest rates and appropriate foreign loss payment patterns to be used by controlled foreign corporations in calculating their qualified insurance income under section 954(i) of the Internal Revenue Code. Taxpayers may rely on the guidance in this notice until regulations or other guidance are published.

Form Number: None.

Affected Public: Individuals or households, business, or other for-profit organizations.

Estimated Number of Respondents: 300.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

27. Title: Section 9100 Relief for 338 Elections.

OMB Control Number: 1545–1820.

Type of Review: Extension of a currently approved collection.

Description: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Form Number: None.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 60.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 300.

28. Title: Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

OMB Control Number: 1545–1831.

Type of Review: Extension of a currently approved collection.

Description: This document contains final regulations regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency. These regulations are necessary because current regulations do not provide guidance concerning the tax treatment of such instruments. The regulations affect issuers and holders of such instruments.

Form Number: None.

Affected Public: Businesses and other-for-profit organizations, Farms.

Estimated Number of Respondents: 100.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: 24 minutes.

Estimated Total Annual Burden Hours: 100.

29. Title: Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes.

OMB Control Number: 1545–1902.

Type of Review: Extension of a currently approved collection.

Description: This previously approved Regulation requires taxpayers

to report a qualified severance by filing a Form 706–GS(T), or such other form that may be published by the Internal Revenue Service in the future that is specifically designated to be utilized to report qualified severances. Where Form 706–GS(T) is used, the filer should attach a Notice of Qualified Severance to the return that clearly identifies the trust that is being severed and the new trusts created as a result of the severance. The Notice must also provide the inclusion ratio of the trust that was severed and the inclusion ratios of the new trusts resulting from the severance. The information collected will be used by the IRS to identify the trusts being severed and the new trusts created upon severance. The collection of information is required in order to have a qualified severance.

Form Number: None.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 650.

Estimated Time per Response: 2 hours, 5 minutes.

Estimated Total Annual Burden Hours: 1,352.

30. Title: Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax.

OMB Control Number: 1545–1913.

Type of Review: Extension of a currently approved collection.

Description: Form 8892 was created to serve a dual purpose. First, the form enables the taxpayers to request an automatic 6-month extension of time to file Form 709 when they are not filing an individual income tax extension using Form 4868. Second, to make a payment of gift tax when you're applying for an extension of time to file Form 709 (including payment of any generation-skipping transfer (GST) tax from Form 709).

Form Number: Form 8892.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 21.

Estimated Time per Response: 43 minutes.

Estimated Total Annual Burden Hours: 16 hours.

31. Title: Low Sulfur Diesel Fuel Production Credit.

OMB Control Number: 1545–1914.

Type of Review: Extension of a currently approved collection.

Description: IRC section 45H allows small business refiners to claim a credit for the production of low sulfur diesel fuel. The American Jobs Creation Act of 2004 section 399 brought it into existence. Form 8896 will allow taxpayers to use a standardized format to claim this credit.

Form Number: Form 8896.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 66.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 66.

Estimated Time per Response: 3 hours, 59 minutes.

Estimated Total Annual Burden Hours: 260.

32. Title: Repayment of a buyout prior to re-employment with the Federal Government.

OMB Control Number: 1545–1920.

Type of Review: Extension of a currently approved collection.

Description: This form requests applicants to certify if they ever worked for the Federal Government and if they received a Buyout within the last 5 years. This is to ensure that applicants who meet the criteria are counseled that they are required to pay back the entire Buyout prior to entering on duty with the IRS.

Form Number: 12311.

Affected Public: Individuals or households and Federal Government.

Estimated Number of Respondents: 6,624.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 6,624.

Estimated Time per Response: 4.8 mins.

Estimated Total Annual Burden Hours: 530.

33. Title: Information Referral.

OMB Control Number: 1545–1960.

Type of Review: Extension of a currently approved collection.

Description: Form 3949–A is used by certain taxpayer/investors to wishing to report alleged tax violations. The form will be designed to capture the essential information needed by IRS for an initial evaluation of the report. Upon return, the Service will conduct the same back-end processing required under present IRM guidelines. Submission of the information to be included on the form is entirely voluntary on the part of the caller and is not a requirement of the Tax Code.

Form Number: Form 3949–A.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 215,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 215,000.

Estimated Time per Response: 15 hours.

Estimated Total Annual Burden Hours: 53,750.

34. Title: Guidance on Passive Foreign Investment Company (PFIC) Purging Elections.

OMB Control Number: 1545–1965.

Type of Review: Extension of a currently approved collection.

Description: Section 1.1297–3T(c) allows a shareholder of a 1297(e) PFIC to make a deemed dividend election pursuant to which the shareholder includes in income as a dividend its pro rata share of the post-1986 earning and profit of the PFIC attributable to all of the stock it held, directly or indirectly on the CFC qualification date, as defined in 1.1297–3T(d). The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

Form Number: None.

Affected Public: Business or other-for-profit organizations and individuals.

Estimated Number of Respondents: 250.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 250.

35. Title: Measurement of Assets and Liabilities for Pension Funding Purposes.

OMB Control Number: 1545–2095.

Type of Review: Revision of a currently approved collection.

Description: In order to implement the statutory provisions under sections 430 and 436, this final regulation contains collections of information in §§ 1.430(f)–1(f), 1.430(h)(2)–1(e), 1.436–1(f), and 1.436–1(h). The information required under § 1.430(f)–1(f) is required in order for plan sponsors to make elections regarding a plan's credit balances upon occasion. The information under § 1.430(g)–1(d)(3) is required in order for a plan sponsor to include as a plan asset a contribution made to avoid a restriction under section 436. The information required under § 1.430(h)(2)–1(e) is required in order for a plan sponsor to make an election to use an alternative interest rate for purposes of determining a plan's funding obligations under § 1.430(h)(2)–1. The information required under §§ 1.436–1(f) and 1.436–1(h) is required in order for a qualified defined benefit plan's enrolled actuary to provide a

timely certification of the plan's adjusted funding target attainment percentage (AFTAP) for each plan year to avoid certain benefit restrictions.

The Highway and Transportation Funding Act of 2014 (HATFA), Public Law 113–159, was enacted on August 8, 2014, and was effective retroactively for single employer defined benefit pension plans, optional for plan years beginning in 2013 and mandatory for plan years beginning in 2014.

Section 3608(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136 provides that for purposes of applying § 436 of the Code (and § 206(g) of ERISA), a sponsor of a single-employer defined benefit pension plan may elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020, as the AFTAP for plan years that include calendar year 2020. Notice 2020–61, in part, provides guidance on the rules relating to this election.

Section 115(a) of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, added new § 430(m) to the Code to permit the plan sponsor of a community newspaper plan under which no participant has had an increase in accrued benefit after December 31, 2017 to elect to have alternative minimum funding standards apply to the plan in lieu of the minimum funding requirements that would otherwise apply under § 430. Pursuant to § 430(m)(2), any election under § 430(m) will be made at such time and in such manner as prescribed by the Secretary, and once an election is made with respect to a plan year, it will apply to all subsequent plan years unless revoked with the consent of the Secretary. Notice 2020–60 provides guidance regarding this election.

Notice 2021–48 provides guidance on the changes to the funding rules for single-employer defined benefit pension plans under § 430 of the Code that were made by §§ 9705 and 9706 of the (the ARP), Public Law 117–2. The ARP added § 430(c)(8), respect to plan years beginning after December 31, 2021 (or, at the election of the plan sponsor, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020), the shortfall amortization bases for all plan years preceding the first plan year to which this provision applies (and all shortfall amortization installments determined with respect to those bases) are reduced to zero, and shortfall amortization installments for all new shortfall amortization bases are calculated to amortize each shortfall amortization base over 15 plan years.

In addition, § 9706 of the ARP provides changes to the applicable minimum and maximum percentages for the 24-month average segment rates set forth in the table in § 430(h)(2)(C)(iv)(II) of the Code, effective with respect to plan years beginning after December 31, 2019. However, § 9706(c)(2) provides that a plan sponsor may elect not to have the amendments made by § 9706 apply to any plan year beginning before January 1, 2022, either (as specified in the election) for all purposes or solely for purposes of determining the AFTAP for the plan year. This notice provides guidance regarding the elections under § 430(c)(8) of the Code and § 9706(c)(2) of the ARP.

Form Number: None.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

TD 9467

Estimated Number of Respondents: 80,000.

Estimated Time per Respondent: 1.5 hrs.

Estimated Total Annual Burden Hours: 120,000.

Notice: 2020–60

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1,000.

Notice 2020–61

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 4 hr.

Estimated Total Annual Burden Hours: 80.

Notice 2021–48

Estimated Number of Responses: 160,000.

Estimated Time per Respondent: 25 hr.

Estimated Total Annual Burden Hours: 40,000.

36. Title: Credit for Employer Differential Wage Payments.

OMB Control Number: 1545–2126.

Type of Review: Extension of a currently approved collection.

Description: Employers use Form 8932 to claim the credit for eligible differential wage payments made to qualified employees during the tax year. The credit is 20% of the first $20,000 of differential wage payments paid to each qualified employee.

Form Number: Form 8932.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,110.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,110.

Estimated Time per Response: 2 hours, 58 minutes.

Estimated Total Annual Burden Hours: 6,246.

37. Title: Form 8928—Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code & TD 9457—Employer Comparable Contributions to HSAs and requirement of Return for filing excise taxes under sections 4980B, 4980D, 4980E and 4980G.

OMB Control Number: 1545–2146.

Type of Review: Extension of a currently approved collection.

Description: Form 8928 is used by employers, group health plans HMOs, and third-party administrators to report and pay excise taxes due for failures under sections 4980B, 4980D, 4980E, and 4980G. The information results from the requirement form TD 9457 to file a return for the payment of the excise taxes under sections 4980B, 4980D, 4980E, and 4980G of the code.

Form Number: Form 8928.

Affected Public: Business or other for-profit organizations, not-for-profit organizations, and individuals.

Estimated Number of Respondents: 68.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 68.

Estimated Time per Response: 23.48 hours.

Estimated Total Annual Burden Hours: 1,597.

38. Title: The Health Coverage Tax Credit (HCTC) Reimbursement Request Form.

OMB Control Number: 1545–2152.

Type of Review: Revision of a currently approved collection.

Description: This form will be used by HCTC participants to request reimbursement for health plan premiums paid prior to the commencement of advance payments.

Form Number: Form 14095.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,416.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 3,416.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 2,278 hours.

39. Title: Statement of Specified Foreign Financial Assets.

OMB Control Number: 1545–2195.

Type of Review: Extension of a currently approved collection.

Description: Form 8938 was developed to comply with IRC section 6038D to Report Foreign Financial Assets. Taxpayers use Form 8938 to report specified foreign financial assets if the total value of all the specified foreign financial assets in which they have an interest is more than the appropriate reporting threshold.

Form Number: Form 8938.

Affected Public: Individuals or households, business, or other for-profit organizations.

Estimated Number of Respondents: 350,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 350,000.

Estimated Time per Response: 4 hours 43 minutes.

Estimated Total Annual Burden Hours: 1,652,000.

40. Title: Branded Prescription Drug Fee.

OMB Control Number: 1545–2209.

Type of Review: Extension of a currently approved collection.

Description: This document contains regulations that provide guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs.

Form Number: None.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 45.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 45.

Estimated Time per Response: 40 hours.

Estimated Total Annual Burden Hours: 1,800.

41. Title: Applications for Voluntary Classification Settlement Program.

OMB Control Number: 1545–2215.

Type of Review: Extension of a currently approved collection.

Description: Form 8952 was created by the IRS in conjunction with the development of a new program to permit taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes and obtain similar relief to that obtained in the current Classification Settlement Program. To participate in the program, taxpayers must meet certain eligibility requirements, apply to participate in VCSP, and enter into closing agreements with the IRS.

Form Number: Form 8952.

Affected Public: Businesses and other-for-profit organizations.

Estimated Number of Respondents: 1,700.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,700.

Estimated Time per Response: 9 hours, 51 minutes.

Estimated Total Annual Burden Hours: 16,745.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

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Part II

Department of Education

Applications for New Awards; Teacher Quality Partnership Grant Program; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher Quality Partnership Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the Teacher Quality Partnership Grant (TQP) program, Assistance Listing Number 84.336S. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: February 25, 2022.

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged, but not required, to submit a notice of intent to apply by March 28, 2022.

Deadline for Transmittal of Applications: April 26, 2022.

Deadline for Intergovernmental Review: June 27, 2022.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to post pre-recorded informational webinars designed to provide technical assistance to interested applicants for grants under the TQP program. These informational webinars will be available on the TQP web page shortly after this notice is published in the **Federal Register** at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-quality-partnership/applicant-info-and-eligibility.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Mia Howerton, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C152, Washington, DC 20202–5960. Telephone: (202) 205–0147. Email: *Mia.Howerton@ed.gov* or *TQPartnership@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the TQP program are to improve student achievement; improve the quality of prospective and new teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers; hold teacher preparation programs at institutions of higher education (IHEs) accountable for preparing teachers who meet applicable State certification and licensure requirements; and recruit highly qualified individuals, including individuals of color and individuals from other occupations, into the teaching force.

Background: The TQP program supports eligible partnerships that must include a high-need local educational agency (LEA), a high-need school served by the LEA, or a high-need early childhood education (ECE) program; a partner institution; a school, department, or program of education within such partner institution; and a school or department of arts and sciences within such partner institution. It may also include certain other entities. Under section 202(d) and (e) of the Higher Education Act of 1965, as amended (HEA), these partnerships must implement either (a) teacher preparation programs at the pre-baccalaureate or ''fifth-year'' level that include specific reforms in IHEs' existing teacher preparation programs; or (b) teacher residency programs for individuals who are recent graduates with strong academic backgrounds or are mid-career professionals from outside the field of education.

In the FY 2022 TQP competition, through Absolute Priority 1 and 2, we support new pre-baccalaureate and teacher residency models that would emphasize the creation or expansion of high-quality, comprehensive pathways into the classroom. Through Absolute Priorities 3 and 4, we add a focus on school leadership. Absolute Priority 3 supports the development of school leader programs in conjunction with the preparation of pre-baccalaureate teachers under Absolute Priority 1. Absolute Priority 4 supports the development of school leader programs in conjunction with the residency model under Absolute Priority 2.

Research on the TQP program shows that high-quality residency models can expand the pool of well-prepared applicants entering the teaching profession, promoting diversity of the workforce and bringing a wide range of experiences into the classroom to support students. In addition, the close partnership between school districts and IHEs required by the TQP program ensures that training programs are closely aligned with practice. A 2014 implementation study published by the Institute of Education Sciences [1] shows that residents are more likely than nonresidents to report feeling prepared to enter the classroom and that after program completion, more than 90 percent of residents stayed in their school district for three years. The Department believes that support for high-quality residency programs is a critical part of ensuring that all students have access to well-prepared and qualified educators.

The Department also recognizes that school leaders are second only to classroom teachers among school-based factors that affect student learning. School leaders play a critically important role in students' academic success, especially in underserved schools, by creating cultures of high expectations for all students, recruiting and retaining highly effective teachers, and creating positive working conditions.

A recent report, ''How Principals Affect Students and Schools: A Systematic Synthesis of Two Decades of Research'',[2] paints a detailed picture of how strong principals affect students' educational and social outcomes as well as other outcomes, including teacher retention. The studies showed that principals' contributions to student achievement were nearly as large as the average effects of teachers identified in similar studies—but larger in scope because they were distributed over an entire school rather than a single

[1] Silva, T., McKie, A., Knechtel, V., Gleason, P., & Makowsky, L. (2014). Teaching Residency Programs: A Multisite Look at a New Model to Prepare Teachers for High-Need Schools (NCEE 2015–4002). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

[2] Grissom, J.A., Egalite, A.J., and Lindsay, C.A. ''How Principals Affect Students and Schools: A Systematic Synthesis of Two Decades of Research,'' February 2021. *www.wallacefoundation.org/knowledgecenter/pages/how-principals-affect-students-and-schools-a-systematic-synthesis-of-two-decades-of-research.aspx.*

classroom. The report notes that its findings on the importance of principals' effects suggest the need for renewed attention to strategies for cultivating, selecting, preparing, and supporting a high-quality principal workforce. Further, the report notes that to meet the needs of growing numbers of marginalized students, principals should ensure fair, just, and nondiscriminatory treatment of all students, the removal of barriers, the provision of resources and supports, and the creation of opportunities with the goal of promoting equitable outcomes.

This competition includes four competitive preference priorities. Competitive Preference Priority 1, from the Effective Educator Development (EED) notice of final priorities, focuses on projects that propose to increase educator diversity. Under Competitive Preference Priority 1, projects must be designed to address identified teacher shortage areas and developed and implemented in partnership with Historically Black Colleges and Universities, Hispanic-Serving Institutions, Tribally Controlled Colleges and Universities, and other minority-serving institutions, in order to diversify the teacher pipeline. Teachers of color benefit all students and can have a particularly strong positive impact on students of color.[3] Yet only around one in five teachers[4] are people of color, compared to more than half of K–12 public school students.[5] The Department recognizes that diverse educators will play a critical role in ensuring equity in our education system.

Competitive Preference Priorities 2, 3, and 4 are all from the Secretary's Supplemental Priorities. Competitive Preference Priority 2 focuses on projects that propose to support a diverse educator workforce that is prepared with the necessary certification and credentialing to teach in shortage areas, while recognizing the teachers' needs in the high-need schools to be served by the proposed project.

Competitive Preference Priority 2 focuses on strengthening teacher recruitment, selection, preparation, support, development, and effectiveness in ways that are consistent with the Department's policy goals of supporting teachers as the professionals they are and improving outcomes for all students by ensuring that underserved students have equal access to well-qualified, experienced, diverse, and effective educators. There is significant inequity in students' access to well-qualified, experienced, and effective teachers[6] particularly for students from low-income backgrounds, students of color, and children or students with disabilities. Teacher candidates deserve access to high-quality comprehensive preparation programs that have high standards and provide necessary supports for successful completion. Additionally, it is crucial to support and retain educators through practices such as mentoring; creating or enhancing opportunities for professional growth, including leadership opportunities; providing competitive compensation; and creating conditions for successful teaching and learning. Finally, Competitive Preference Priority 2 emphasizes the need to increase the number of teachers with certification or dual certification in shortage areas, as well as advanced certifications from nationally recognized professional organizations.

Competitive Preference Priorities 3 and 4 focus on projects that propose to meet students' social, emotional, and academic needs and support projects that propose to promote equity in student access to educational resources and opportunities. These competitive preference priorities recognize the social, emotional, and academic needs of teacher candidates, as well as the importance of preparing those teachers to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students.

Research has demonstrated that, in elementary and secondary schools, children learn, grow, and achieve at higher levels in safe and supportive environments, and in the care of responsive adults they can trust.[7] It is critical, then, to prioritize support for students' social, emotional, and academic needs, not only to benefit students' social and emotional wellness, but also to support their academic success. Mounting evidence suggests that supporting social and emotional learning can contribute to overall student development.[8] Therefore, educators need to develop skills to effectively incorporate social and emotional learning into their instructional practice.

Lastly, this competition includes one invitational priority for applicants that propose Grow Your Own (GYO) projects that encourage members of the community to pursue teaching careers. GYO projects can help address teacher shortages by increasing retention rates while also enhancing educator diversity.

The Biden Administration is committed to strengthening and diversifying teacher preparation, including by supporting GYO programs, to strengthen teacher pipelines and address shortages, increase the number of teachers of color, and support the growth of teachers. GYO programs encourage partnerships between LEAs and educator preparation programs. The effort to recruit and retain diverse educators, including through GYO programs, starts with such a collaboration. By fostering a shared reliance on the teacher preparation work that both the districts and IHEs provide, GYO models promote the preparation of local residents who will then be retained in that community and help to build capacity. A report from New America, *Grow Your Own: A 50-State Scan of Grow Your Own Teacher Policies and Programs,*[9] suggests that homegrown teachers have higher rates of retention and GYO programs remove barriers that have kept some individuals from being able to access and persist in a teacher preparation program. The Department sees GYO as a practice that warrants investments through the TQP program for further learning and evidence-building, replication, and dissemination.

Priorities: This notice contains four absolute priorities, four competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 202(d), (e), and (f) of the HEA (20 U.S.C. 1022a(d),

[3] *https://learningpolicyinstitute.org/sites/default/files/productfiles/Diversifying_Teaching_Profession_REPORT_0.pdf.*

[4] *www.bls.gov/cps/cpsaat11.htm.*

[5] *https://nces.ed.gov/programs/coe/indicator/cge.*

[6] Isenberg, E., Max, J., Gleason, P., Johnson, M., Deutsch, J., and Hansen, M. (2016). Do Low-Income Students Have Equal Access to Effective Teachers? Evidence from 26 Districts (NCEE 2017–4007). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

[7] Reyes, M.R., Brackett, M.A., Rivers, S.E., White, M., & Salovey, P. (2012). Classroom Emotional Climate, Student Engagement, and Academic Achievement. Journal of Educational Psychology, 104 (3), 700.

[8] Cross Francis, D., Liu, J., Bharaj, P.K., & Eker, A. (2019). ''*Integrating Social-emotional and Academic Development in Teachers' Approaches to Educating Students,*'' *Policy Insights from the Behavioral and Brain Sciences,* 6 (2), 138–146; Swanson, E., Melguizo, T., & Martorell, P. (2020). *Examining the Relationship between Psychosocial and Academic Outcomes in Higher Education: A Descriptive Analysis.* (EdWorkingPaper: 20–286); Robbins, S.B., Lauver, K., Le, H., Davis, D., Langley, R., & Carlstrom, A. (2004). *Do Psychosocial and Study Skill Factors Predict College Outcomes? A Meta-Analysis.* Psychological Bulletin, 130(2), 261–288.

[9] Garcia, A. (2020). ''A 50-State Scan of Grow Your Own Teacher Policies and Programs.'' *www.newamerica.org/education-policy/reports/grow-your-own-teachers/.*

(e) and (f)). Competitive Preference Priority 1 is from the EED notice of final priorities published in the **Federal Register** on July 9, 2021 (86 FR 36217) (EED NFP), and Competitive Preference Priorities 2, 3, and 4 are from the Secretary's notice of final supplemental priorities and definitions published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. All applications must address one of the four absolute priorities. Each of the four absolute priorities constitutes its own funding category. Assuming that applications in each funding category are of sufficient quality, the Secretary intends to award grants under each absolute priority.

Applications will be peer reviewed and scored based on the selection criteria. Applications will be scored and placed in rank order by absolute priority; thus, applications will be scored and ranked separately to create four funding slates. Applications that address more than one absolute priority or do not clearly identify the absolute priority being addressed will not be reviewed.

Absolute Priority 1—Partnership Grants for the Preparation of Teachers.

Under this priority, an eligible partnership must carry out an effective pre-baccalaureate teacher preparation program or a fifth-year initial licensing program that includes all of the following:

(a) *Program Accountability.* Implementing reforms, described in paragraph (b) of this priority, within each teacher preparation program and, as applicable, each preparation program for ECE programs, of the eligible partnership that is assisted under this priority, to hold each program accountable for—

(1) Preparing—

(i) New or prospective teachers to meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the Individuals with Disabilities Education Act (IDEA) (including teachers in rural school districts, special educators, and teachers of students who are limited English proficient);

(ii) Such teachers and, as applicable, early childhood educators, to understand empirically based practice and scientifically valid research related to teaching and learning and the applicability of such practice and research, including through the effective use of technology instructional techniques, and strategies consistent with the principles of universal design for learning, and through positive behavioral interventions and support strategies to improve student achievement; and

(iii) As applicable, early childhood educators to be highly competent; and

(2) Promoting strong teaching skills and, as applicable, techniques for early childhood educators to improve children's cognitive, social, emotional, and physical development.

Note: In addressing paragraph (a) of this priority, applicants may either discuss their implementation of reforms within all teacher preparation programs that the partner IHE administers and that would be assisted under this TQP grant, or selected teacher preparation programs that need particular assistance and that would receive the TQP grant funding.

(b) *Required reforms.* The reforms described in paragraph (a) shall include—

(1) Implementing teacher preparation program curriculum changes that improve, evaluate, and assess how well all prospective and new teachers develop teaching skills;

(2) Using empirically-based practice and scientifically valid research, where applicable, about teaching and learning so that all prospective teachers and, as applicable, early childhood educators—

(i) Understand and can implement research-based teaching practices in classroom instruction;

(ii) Have knowledge of student learning methods;

(iii) Possess skills to analyze student academic achievement data and other measures of student learning and use such data and measures to improve classroom instruction;

(iv) Possess teaching skills and an understanding of effective instructional strategies across all applicable content areas that enable general education and special education teachers and early childhood educators to—

(A) Meet the specific learning needs of all students, including students with disabilities, students who are limited English proficient, students who are gifted and talented, students with low literacy levels, and, as applicable, children in ECE programs; and

(B) Differentiate instruction for such students;

(v) Can effectively participate as a member of the individualized education program team, as defined in section 614(d)(1)(B) of the IDEA; and

(vi) Can successfully employ effective strategies for reading instruction using the essential components of reading instruction;

(3) Ensuring collaboration with departments, programs, or units of a partner institution outside of the teacher preparation program in all academic content areas to ensure that prospective teachers receive training in both teaching and relevant content areas in order to meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, which may include training in multiple subjects to teach multiple grade levels as may be needed for individuals preparing to teach in rural communities and for individuals preparing to teach students with disabilities;

(4) Developing and implementing an induction program;

(5) Developing admissions goals and priorities aligned with the hiring objectives of the high-need LEA in the eligible partnership; and

(6) Implementing program and curriculum changes, as applicable, to ensure that prospective teachers have the requisite content knowledge, preparation, and degree to teach Advanced Placement or International Baccalaureate courses successfully.

(c) *Clinical experience and interaction.* Developing and improving a sustained and high-quality preservice clinical education program to further develop the teaching skills of all prospective teachers and, as applicable, early childhood educators involved in the program. Such programs shall do the following—

(1) Incorporate year-long opportunities for enrichment, including—

(i) Clinical learning in classrooms in high-need schools served by the high-need LEA in the eligible partnership, and identified by the eligible partnership; and

(ii) Closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at ECE programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction;

(2) Integrate pedagogy and classroom practice and promote effective teaching skills in academic content areas;

(3) Provide high-quality teacher mentoring;

(4) Be offered over the course of a program of teacher preparation;

(5) Be tightly aligned with course work (and may be developed as a fifth year of a teacher preparation program);

(6) Where feasible, allow prospective teachers to learn to teach in the same LEA in which the teachers will work, learning the instructional initiatives and curriculum of that LEA;

(7) As applicable, provide training and experience to enhance the teaching skills of prospective teachers to better prepare such teachers to meet the unique needs of teaching in rural or urban communities; and

(8) Provide support and training for individuals participating in an activity for prospective or new teachers described in this paragraph, or paragraphs (a) and (b), or (d) of this priority, and for individuals who serve as mentors for such teachers, based on each individual's experience. Such support may include—

(i) With respect to a prospective teacher or a mentor, release time for such individual's participation;

(ii) With respect to a faculty member, receiving course workload credit and compensation for time teaching in the eligible partnership's activities; and

(iii) With respect to a mentor, a stipend, which may include bonus, differential, incentive, or performance pay, based on the mentor's extra skills and responsibilities.

(d) *Induction programs for new teachers.* Creating an induction program for new teachers or, in the case of an ECE program, providing mentoring or coaching for new early childhood educators.

(e) *Support and training for participants in ECE programs.* In the case of an eligible partnership focusing on early childhood educator preparation, implementing initiatives that increase compensation for early childhood educators who attain associate or baccalaureate degrees in ECE.

(f) *Teacher recruitment.* Developing and implementing effective mechanisms (which may include alternative routes to State certification of teachers) to ensure that the eligible partnership is able to recruit qualified individuals to become teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA through the activities of the eligible partnership, which may include an emphasis on recruiting into the teaching profession—

(1) Individuals from underrepresented populations;

(2) Individuals to teach in rural communities and teacher shortage areas, including mathematics, science, special education, and the instruction of limited English proficient students; and

(3) Mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(g) *Literacy training.* Strengthening the literacy teaching skills of prospective and, as applicable, new elementary school and secondary school teachers—

(1) To implement literacy programs that incorporate the essential components of reading instruction;

(2) To use screening, diagnostic, formative, and summative assessments to determine students' literacy levels, difficulties, and growth in order to improve classroom instruction and improve student reading and writing skills;

(3) To provide individualized, intensive, and targeted literacy instruction for students with deficiencies in literacy skills; and

(4) To integrate literacy skills in the classroom across subject areas.

Absolute Priority 2—Partnership Grants for the Establishment of Effective Teaching Residency Programs

I. *In general.* Under this priority, an eligible partnership must carry out an effective teaching residency program that includes all of the following activities:

(a) Supporting a teaching residency program described in paragraph II for high-need subjects and areas, as determined by the needs of the high-need LEA in the partnership.

(b) Placing graduates of the teaching residency program in cohorts that facilitate professional collaboration, both among graduates of the teaching residency program and between such graduates and mentor teachers in the receiving school.

(c) Ensuring that teaching residents who participate in the teaching residency program receive—

(1) Effective pre-service preparation as described in paragraph II;

(2) Teacher mentoring;

(3) Support required through the induction program as the teaching residents enter the classroom as new teachers; and

(4) The preparation described below:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in classrooms in high-need schools served by the high-need LEA in the eligible partnership, and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at ECE programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction.

(ii) Integrate pedagogy and classroom practice and promote effective teaching skills in academic content areas.

(iii) Provide high-quality teacher mentoring.

II. *Teaching Residency Programs.*

(a) *Establishment and design.* A teaching residency program under this priority is a program based upon models of successful teaching residencies that serves as a mechanism to prepare teachers for success in the high-need schools in the eligible partnership, and must be designed to include the following characteristics of successful programs:

(1) The integration of pedagogy, classroom practice, and teacher mentoring.

(2) Engagement of teaching residents in rigorous graduate-level course work leading to a master's degree while undertaking a guided teaching apprenticeship.

(3) Experience and learning opportunities alongside a trained and experienced mentor teacher—

(i) Whose teaching must complement the residency program so that classroom clinical practice is tightly aligned with coursework;

(ii) Who must have extra responsibilities as a teacher leader of the teaching residency program, as a mentor for residents, and as a teacher coach during the induction program for new teachers; and for establishing, within the program, a learning community in which all individuals are expected to continually improve their capacity to advance student learning; and

(iii) Who may be relieved from teaching duties as a result of such additional responsibilities.

(4) The establishment of clear criteria for the selection of mentor teachers based on measures of teacher effectiveness and the appropriate subject area knowledge. Evaluation of teacher effectiveness must be based on, but not limited to, observations of the following—

(i) Planning and preparation, including demonstrated knowledge of content, pedagogy, and assessment, including the use of formative and

diagnostic assessments to improve student learning.

(ii) Appropriate instruction that engages students with different learning styles.

(iii) Collaboration with colleagues to improve instruction.

(iv) Analysis of gains in student learning, based on multiple measures that are valid and reliable and that, when feasible, may include valid, reliable, and objective measures of the influence of teachers on the rate of student academic progress.

(v) In the case of mentor candidates who will be mentoring new or prospective literacy and mathematics coaches or instructors, appropriate skills in the essential components of reading instruction, teacher training in literacy instructional strategies across core subject areas, and teacher training in mathematics instructional strategies, as appropriate.

(5) Grouping of teaching residents in cohorts to facilitate professional collaboration among such residents.

(6) The development of admissions goals and priorities—

(i) That are aligned with the hiring objectives of the LEA partnering with the program, as well as the instructional initiatives and curriculum of such agency, in exchange for a commitment by such agency to hire qualified graduates from the teaching residency program; and

(ii) Which may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession.

(7) Support for residents, once the teaching residents are hired as teachers of record, through an induction program, professional development, and networking opportunities to support the residents through not less than the residents' first two years of teaching.

(b) *Selection of individuals as teacher residents.*

(1) *Eligible individual.* In order to be eligible to be a teacher resident in a teaching residency program under this priority, an individual must—

(i) Be a recent graduate of a four-year IHE or a mid-career professional from outside the field of education possessing strong content knowledge or a record of professional accomplishment; and

(ii) Submit an application to the teaching residency program.

(2) *Selection criteria for teaching residency program.* An eligible partnership carrying out a teaching residency program under this priority must establish criteria for the selection of eligible individuals to participate in the teaching residency program based on the following characteristics—

(i) Strong content knowledge or record of accomplishment in the field or subject area to be taught.

(ii) Strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests.

(iii) Other attributes linked to effective teaching, which may be determined by interviews or performance assessments, as specified by the eligible partnership.

(c) *Stipends or salaries; applications; agreements; repayments.*

(1) *Stipends or salaries.* A teaching residency program under this priority must provide a one-year living stipend or salary to teaching residents during the teaching residency program.

(2) *Applications for stipends or salaries.* Each teacher residency candidate desiring a stipend or salary during the period of residency must submit an application to the eligible partnership at such time, and containing such information and assurances, as the eligible partnership may require.

(3) *Agreements to serve.* Each application submitted under paragraph II–(c)(2) of this priority must contain or be accompanied by an agreement that the applicant will—

(i) Serve as a full-time teacher for a total of not less than three academic years immediately after successfully completing the teaching residency program;

(ii) Fulfill the requirement under paragraph II–(c)(3)(i) of this priority by teaching in a high-need school served by the high-need LEA in the eligible partnership and teach a subject or area that is designated as high need by the partnership;

(iii) Provide to the eligible partnership a certificate, from the chief administrative officer of the LEA in which the resident is employed, of the employment required under paragraph II–(c)(3)(i) and (ii) of this priority at the beginning of, and upon completion of, each year or partial year of service;

(iv) Meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, when the applicant begins to fulfill the service obligation under paragraph II–(c)(3) of this priority; and

(v) Comply with the requirements set by the eligible partnership under paragraph II–(d) of this priority if the applicant is unable or unwilling to complete the service obligation required by paragraph II–(c)(3).

(d) *Repayments.*

(1) *In general.* A grantee carrying out a teaching residency program under this priority must require a recipient of a stipend or salary under paragraph II–(c)(1) of this priority who does not complete, or who notifies the partnership that the recipient intends not to complete, the service obligation required by paragraph II–(c)(3) of this priority to repay such stipend or salary to the eligible partnership, together with interest, at a rate specified by the partnership in the agreement, and in accordance with such other terms and conditions specified by the eligible partnership, as necessary.

(2) *Other terms and conditions.* Any other terms and conditions specified by the eligible partnership may include reasonable provisions for pro-rata repayment of the stipend or salary described in paragraph II–(c)(1) of this priority or for deferral of a teaching resident's service obligation required by paragraph II–(c)(3) of this priority, on grounds of health, incapacitation, inability to secure employment in a school served by the eligible partnership, being called to active duty in the Armed Forces of the United States, or other extraordinary circumstances.

(3) *Use of repayments.* An eligible partnership must use any repayment received under this paragraph (d) of this priority to carry out additional activities that are consistent with the purpose of this priority.

Absolute Priority 3—Partnership Grants for the Development of Leadership Programs in Conjunction With the Preparation of Teachers Under Absolute Priority 1

Under this priority the Secretary gives priority to applications from eligible partnerships that propose to carry out an effective school leadership program that will prepare individuals enrolled or preparing to enroll in those programs for careers as superintendents, principals, ECE program directors, or other school leaders (including individuals preparing to work in LEAs located in rural areas who may perform multiple duties in addition to the role of a school leader).

An eligible partnership may carry out the school leadership program either in the partner high-need LEA or in further partnership with an LEA located in a rural area.

The school leadership program carried out under this priority must include the following activities:

(a) Preparation of school leaders. In preparing school leaders, the school

leadership program must include the following activities:

(1) Promoting strong leadership skills and, as applicable, techniques for school leaders to effectively—

(i) Create and maintain a data-driven, professional learning community within the leader's schools;

(ii) Provide a climate conducive to the professional development of teachers, with a focus on improving student achievement and the development of effective instructional leadership skills;

(iii) Understand the teaching and assessment skills needed to support successful classroom instruction and to use data to evaluate teacher instruction and drive teacher and student learning;

(iv) Manage resources and school time to improve student academic achievement and ensure the school environment is safe;

(v) Engage and involve parents, community members, the LEA, businesses, and other community leaders, to leverage additional resources to improve student academic achievement; and

(vi) Understand how students learn and develop in order to increase academic achievement for all students.

(2) Developing and improving a sustained and high-quality preservice clinical education program to further develop the leadership skills of all prospective school leaders involved in the program. This clinical education program must do the following:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in high-need schools served by the high-need LEA or an LEA located in a rural area in the eligible partnership and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective school leaders and faculty, new and experienced teachers, and new and experienced school leaders, in those high-need schools.

(ii) Integrate pedagogy and practice and promote effective leadership skills, meeting the unique needs of urban, rural, or geographically isolated communities, as applicable.

(iii) Provide for mentoring of new school leaders.

(3) Creating an induction program for new school leaders.

(4) Ensuring that individuals who participate in the school leadership program receive—

(i) Effective preservice preparation as described in paragraph (a)(2) of this priority;

(ii) Mentoring; and

(iii) If applicable, full State certification or licensure to become a school leader.

(5) Developing and implementing effective mechanisms to ensure that the eligible partnership is able to recruit qualified individuals to become school leaders through activities that may include an emphasis on recruiting into school leadership professions—

(i) Individuals from underrepresented populations;

(ii) Individuals to serve as superintendents, principals, or other school administrators in rural and geographically isolated communities and school leader shortage areas; and

(iii) Mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(b) In order to be eligible for the school leadership program under this priority, an individual must be enrolled in or preparing to enroll in an IHE, and must—

(1) Be a—

(i) Recent graduate of an IHE;

(ii) Mid-career professional from outside the field of education with strong content knowledge or a record of professional accomplishment;

(iii) Current teacher who is interested in becoming a school leader; or

(iv) School leader who is interested in becoming a superintendent; and

(2) Submit an application to the leadership program.

Absolute Priority 4—Partnership Grants for the Development of Leadership Programs in Conjunction With the Establishment of an Effective Teaching Residency Program Under Absolute Priority 2

Under this priority the Secretary gives priority to applications from eligible partnerships that propose to carry out an effective school leadership program that will prepare individuals enrolled or preparing to enroll in those programs for careers as superintendents, principals, ECE program directors, or other school leaders (including individuals preparing to work in LEAs located in rural areas who may perform multiple duties in addition to the role of a school leader).

An eligible partnership may carry out the school leadership program either in the partner high-need LEA or in further partnership with an LEA located in a rural area.

The school leadership program carried out under this priority must include the following activities:

(a) Preparation of school leaders. In preparing school leaders, the school leadership program must include the following activities:

(1) Promoting strong leadership skills and, as applicable, techniques for school leaders to effectively—

(i) Create and maintain a data-driven, professional learning community within the leader's schools.

(ii) Provide a climate conducive to the professional development of teachers, with a focus on improving student achievement and the development of effective instructional leadership skills;

(iii) Understand the teaching and assessment skills needed to support successful classroom instruction and to use data to evaluate teacher and drive teacher and student learning;

(iv) Manage resources and school time to improve student academic achievement and ensure a safe school environment;

(v) Engage and involve parents, community members, the LEA, businesses, and other community leaders, to leverage additional resources to improve student academic achievement; and

(vi) Understand how students learn and develop in order to increase academic achievement for all students.

(2) Developing and improving a sustained and high-quality preservice clinical education program to further develop the leadership skills of all prospective school leaders involved in the program. This clinical education program must do the following:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in high-need schools served by the high-need LEA or an LEA located in a rural area in the eligible partnership and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective school leaders and faculty, new and experienced teachers, and new and experienced school leaders, in those high-need schools.

(ii) Integrate pedagogy and practice and promote effective leadership skills, meeting the unique needs of urban, rural, or geographically isolated communities, as applicable.

(iii) Provide for mentoring of new school leaders.

(3) Creating an induction program for new school leaders.

(4) Ensuring that individuals who participate in the school leadership program receive—

(i) Effective preservice preparation as described in paragraph (a)(2) of this priority.

(ii) Mentoring; and

(iii) If applicable, full State certification or licensure to become a school leader.

(5) Developing and implementing effective mechanisms to ensure that the eligible partnership is able to recruit qualified individuals to become school leaders through activities that may

include an emphasis on recruiting into school leadership professions—

(i) Individuals from underrepresented populations.

(ii) Individuals to serve as superintendents, principals, or other school administrators in rural and geographically isolated communities and school leader shortage areas; and

(iii) Mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(b) In order to be eligible for the school leadership program under this priority, an individual must be enrolled in or preparing to enroll in an IHE, and must—

(1) Be a—

(i) Recent graduate of an IHE;

(ii) Mid-career professional from outside the field of education with strong content knowledge or a record of professional accomplishment;

(iii) Current teacher who is interested in becoming a school leader; or

(iv) School leader who is interested in becoming a superintendent; and

(2) Submit an application to the leadership program.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to an additional four points to an application depending on how well the application addresses Competitive Preference Priority 1, we will award up to an additional three points to an application depending on how well the application addresses Competitive Preference Priority 2, we will award up to an additional two points to an application depending on how well the application addresses Competitive Preference Priority 3, and we will award up to an additional two points to an application depending on how well the application addresses Competitive Preference Priority 4, for a maximum of eleven additional competitive preference points.

If an applicant chooses to address one or more of the competitive preference priorities, the project narrative section of its application must identify its response to the competitive preference priorities it chooses to address. We will only review responses to the competitive preference priorities for those applications that, after review and scoring for the absolute priority and selection criteria, are within potential funding range.

These priorities are:

Competitive Preference Priority 1—Increasing Educator Diversity (Up to 4 Points)

Under this priority, applicants must develop projects that are designed to improve the recruitment, outreach, preparation, support, development, and retention of a diverse educator workforce through adopting, implementing, or expanding one or both of the following:

(a) High-quality, comprehensive teacher preparation programs in Historically Black Colleges and Universities (eligible institutions under part B of title III and subpart 4 of part A title VII of the HEA), Hispanic Serving Institutions (eligible institutions under section 502 of the HEA), Tribal Colleges and Universities (eligible institutions under section 316 of the HEA), or other Minority Serving Institutions (eligible institutions under title III and title V of the HEA) that include one year of high-quality clinical experiences (prior to becoming the teacher of record) in high-need schools (as defined in this notice) and that incorporate best practices for attracting, supporting, graduating, and placing underrepresented teacher candidates.

(b) Reforms to teacher preparation programs to improve the diversity of teacher candidates, including changes to ensure underrepresented teacher candidates are fully represented in program admission, completion, placement, and retention as educators.

Competitive Preference Priority 2—Supporting a Diverse Educator Workforce and Professional Growth To Strengthen Student Learning (Up to 3 Points)

Projects that are designed to increase the proportion of well-prepared, diverse, and effective educators serving students, with a focus on underserved students, through increasing the number of teachers with certification or dual certification in a shortage area, or advanced certifications from nationally recognized professional organizations.

Competitive Preference Priority 3—Meeting Student Social, Emotional, and Academic Needs (Up to 2 Points)

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through creating a positive, inclusive, and identity-safe climate at institutions of higher education, through one or more of the following activities:

(a) Fostering a sense of belonging and inclusion for underserved students.

(b) Implementing evidence-based practices for advancing student success for underserved students.

Competitive Preference Priority 4—Promoting Equity in Student Access to Educational Resources and Opportunities (Up to 2 Points)

Under this priority, an applicant must demonstrate that the applicant proposes a project designed to promote educational equity and adequacy in resources and opportunity for underserved students—

(a) In one or more of the following educational settings:

(1) Early learning programs.

(2) Elementary school.

(3) Middle school.

(4) High school.

(5) Career and technical education programs.

(6) Out-of-school-time settings.

(7) Alternative schools and programs.

(b) That examines the sources of inequity and inadequacy and implement responses, and that may include pedagogical practices in educator preparation programs and professional development programs that are inclusive with regard to race, ethnicity, culture, language, and disability status so that educators are better prepared to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students.

Invitational Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Partnership Grants for the Establishment of Grow Your Own Programs

Projects that establish Grow Your Own programs that are designed to address shortages of teachers in high-need areas, schools, and/or geographic areas, or shortages of school leaders in high-need schools, and increase the diversity of qualified individuals entering the teacher, principal, or other school leader workforce.

Definitions: The definitions for ''Arts and sciences,'' ''Children from low income families,'' ''Early childhood educator,'' ''Essential components of reading instruction,'' ''Exemplary teacher,'' ''High-need early childhood education (ECE) program,'' ''High-need local educational agency (LEA),'' ''High-need school,'' ''Highly competent,''

''Induction program,'' ''Limited English proficient,'' ''Partner institution,'' ''Principles of scientific research,'' ''Scientifically valid research,'' ''Teacher mentoring,'' ''Teaching residency program,'' and ''Teaching skills'' are from section 200 of the HEA (20 U.S.C. 1021). The definition of ''Charter school'' is from section 4310(2) of the ESEA (20 U.S.C. 7221i). The definitions of ''Educational service agency,'' ''Parent,'' and ''Professional development'' are from section 8101 of the ESEA (20 U.S.C. 7801). The definitions for ''Demonstrates a rationale,'' ''Evidence-based,'' ''Experimental study,'' ''Logic model,'' ''Moderate evidence,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' ''Strong evidence,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''early learning,'' ''educator,'' ''Military- or veteran-connected student,'' ''and ''Underserved students'' are from the Supplemental Priorities.

Arts and sciences means—

(1) When referring to an organizational unit of an IHE, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subject matter areas in which teachers provide instruction; and

(2) When referring to a specific academic subject area, the disciplines or content areas in which academic majors are offered by the arts and sciences organizational unit.

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), 20 U.S.C. 1232g (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the IDEA (20 U.S.C. 1411 *et seq.*);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with 20 U.S.C. 7221b(c)(3)(A) if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (1);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students.

Children from low-income families means children described in section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early childhood educator means an individual with primary responsibility for the education of children in an ECE program.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to LEAs.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

Essential components of reading instruction means explicit and systematic instruction in—

(1) Phonemic awareness;

(2) Phonics;

(3) Vocabulary development;

(4) Reading fluency, including oral reading skills; and

(5) Reading comprehension strategies.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Exemplary teacher means a teacher who—

(1) Is a highly qualified teacher such as a master teacher;

(2) Has been teaching for at least five years in a public or private school or IHE;

(3) Is recommended to be an exemplary teacher by administrators and other teachers who are knowledgeable about the individual's performance;

(4) Is currently teaching and based in a public school; and

(5) Assists other teachers in improving instructional strategies, improves the skills of other teachers, performs teacher mentoring, develops curricula, and offers other professional development.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(1) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(2) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(3) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-need early childhood education (ECE) program means an ECE program serving children from low-income families that is located within the geographic area served by a high-need LEA.

High-need local educational agency (LEA) means an LEA—

(1)(i) For which not less than 20 percent of the children served by the agency are children from low-income families;

(ii) That serves not fewer than 10,000 children from low-income families;

(iii) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA; or

(iv) That meets eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA (20 U.S.C. 7351(b)); and—

(2)(i) For which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(ii) For which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

Note: Information on how an applicant may demonstrate that a partner LEA meets this definition is included in the application package.

High-need school means a school that, based on the most recent data available, meets one or both of the following:

(1) The school is in the highest quartile of schools in a ranking of all schools served by an LEA, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(i) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(ii) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(iii) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(iv) The percentage of students eligible to receive medical assistance under the Medicaid program.

(v) A composite of two or more of the measures described in paragraphs (1)(i) through (1)(iv).

(2) In the case of—

(i) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act; or

(ii) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(3) The Secretary may, upon approval of an application submitted by an eligible partnership seeking a grant under title II of the HEA, designate a school that does not qualify as a high-need school under this definition, as a high-need school for the purpose of this competition. The Secretary must base the approval of an application for designation of a school under this clause on a consideration of the information required under section 200(11)(B)(ii) of the HEA and may also take into account other information submitted by the eligible partnership.

Note: Information on how an applicant may demonstrate that a partner school meets this definition is included in the application package.

Highly competent, when used with respect to an early childhood educator, means an educator—

(1) With specialized education and training in development and education of young children from birth until entry into kindergarten;

(2) With—

(i) A baccalaureate degree in an academic major in the arts and sciences; or

(ii) An associate's degree in a related educational area; and

(3) Who has demonstrated a high level of knowledge and use of content and pedagogy in the relevant areas associated with quality early childhood education.

Induction program means a formalized program for new teachers during not less than the teachers' first two years of teaching that is designed to provide support for, and improve the professional performance and advance the retention in the teaching field of, beginning teachers. Such program must promote effective teaching skills and must include the following components:

(1) High-quality teacher mentoring.

(2) Periodic, structured time for collaboration with teachers in the same department or field, including mentor teachers, as well as time for information-sharing among teachers, principals, administrators, other appropriate instructional staff, and participating faculty in the partner institution.

(3) The application of empirically-based practice and scientifically valid research on instructional practices.

(4) Opportunities for new teachers to draw directly on the expertise of teacher mentors, faculty, and researchers to support the integration of empirically-

based practice and scientifically valid research with practice.

(5) The development of skills in instructional and behavioral interventions derived from empirically-based practice and, where applicable, scientifically valid research.

(6) Faculty who—

(i) Model the integration of research and practice in the classroom; and

(ii) Assist new teachers with the effective use and integration of technology in the classroom.

(7) Interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers with respect to the learning process and the assessment of learning.

(8) Assistance with the understanding of data, particularly student achievement data, and the applicability of such data in classroom instruction.

(9) Regular and structured observation and evaluation of new teachers by multiple evaluators, using valid and reliable measures of teaching skills.

Limited English proficient,[10] when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(1) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(2) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(3) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(i) Meets WWC standards with or without reservations;

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(iii) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(iv) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (3)(i), (ii), and (iii) of this definition may together satisfy this requirement.

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Partner institution means an IHE, which may include a two-year IHE offering a dual program with a four-year IHE, participating in an eligible partnership that has a teacher preparation program—

(1) Whose graduates exhibit strong performance on State-determined qualifying assessments for new teachers through—

(i) Demonstrating that 80 percent or more of the graduates of the program who intend to enter the field of teaching have passed all of the applicable State qualification assessments for new teachers, which must include an assessment of each prospective teacher's subject matter knowledge in the content area in which the teacher intends to teach; or

(ii) Being ranked among the highest-performing teacher preparation programs in the State as determined by the State—

(A) Using criteria consistent with the requirements for the State report card under section 205(b) of the HEA (20 U.S.C. 1022d(b)) before the first publication of the report card; and

(B) Using the State report card on teacher preparation required under section 205(b) (20 U.S.C. 1022d(b)), after the first publication of such report card and for every year thereafter; and

(2) That requires—

(i) Each student in the program to meet high academic standards or demonstrate a record of success, as determined by the institution (including prior to entering and being accepted into a program), and participate in intensive clinical experience;

[10] ESEA uses the term ''English learner''; however, the term cross-referenced from the HEA is ''limited English proficient.''

(ii) Each student in the program preparing to become a teacher who meets the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)); and

(iii) Each student in the program preparing to become an early childhood educator to meet degree requirements, as established by the State, and become highly competent.

Principles of scientific research means principles of research that—

(1) Apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs;

(2) Present findings and make claims that are appropriate to, and supported by, the methods that have been employed; and

(3) Include, appropriate to the research being conducted—

(i) Use of systematic, empirical methods that draw on observation or experiment;

(ii) Use of data analyses that are adequate to support the general findings;

(iii) Reliance on measurements or observational methods that provide reliable and generalizable findings;

(iv) Strong claims of causal relationships, only with research designs that eliminate plausible competing explanations for observed results, such as, but not limited to, random-assignment experiments;

(v) Presentation of studies and methods in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;

(vi) Acceptance by a peer-reviewed journal or critique by a panel of independent experts through a comparably rigorous, objective, and scientific review; and

(vii) Consistency of findings across multiple studies or sites to support the generality of results and conclusions.

Professional development means activities that—

(1) Are an integral part of school and LEA strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(2) Are sustained (not stand-alone, one-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—

(i) Improve and increase teachers'—

(A) Knowledge of the academic subjects the teachers teach;

(B) Understanding of how students learn; and

(C) Ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(ii) Are an integral part of broad schoolwide and districtwide educational improvement plans;

(iii) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(iv) Improve classroom management skills;

(v) Support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(vi) Advance teacher understanding of—

(A) Effective instructional strategies that are evidence-based; and

(B) Strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(vii) Are aligned with, and directly related to, academic goals of the school or LEA;

(viii) Are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian Tribes (as applicable), and administrators of schools to be served under the ESEA;

(ix) Are designed to give teachers of English learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(x) To the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(xi) As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(xii) Are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(xiii) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(xiv) Include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(xv) Involve the forming of partnerships with IHEs, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the HEA (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(xvi) Create programs to enable paraprofessionals (assisting teachers employed by an LEA receiving assistance under part A of title I of the ESEA) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers;

(xvii) Provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(xviii) Where practicable, provide jointly for school staff and other ECE program providers, to address the transition to elementary school, including issues related to school readiness.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(1) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(2) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(3) A single study assessed by the Department, as appropriate, that—

(i) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Scientifically valid research means applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(1) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(2) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(3) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(i) Meets WWC standards without reservations;

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(iii) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(iv) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (3)(i), (ii), and (iii) of this definition may together satisfy this requirement.

Teacher mentoring means the mentoring of new or prospective teachers through a program that—

(1) Includes clear criteria for the selection of teacher mentors who will provide role model relationships for mentees, which criteria must be developed by the eligible partnership and based on measures of teacher effectiveness;

(2) Provides high-quality training for such mentors, including instructional strategies for literacy instruction and classroom management (including approaches that improve the schoolwide climate for learning, which may include positive behavioral interventions and supports);

(3) Provides regular and ongoing opportunities for mentors and mentees to observe each other's teaching methods in classroom settings during the day in a high-need school in the high-need LEA in the eligible partnership;

(4) Provides paid release time for mentors, as applicable;

(5) Provides mentoring to each mentee by a colleague who teaches in the same field, grade, or subject as the mentee;

(6) Promotes empirically-based practice of, and scientifically valid research on, where applicable—

(i) Teaching and learning;

(ii) Assessment of student learning;

(iii) The development of teaching skills through the use of instructional and behavioral interventions; and

(iv) The improvement of the mentees' capacity to measurably advance student learning; and

(7) Includes—

(i) Common planning time or regularly scheduled collaboration for the mentor and mentee; and

(ii) Joint professional development opportunities.

Teaching residency program means a school-based teacher preparation program in which a prospective teacher—

(1) For one academic year, teaches alongside a mentor teacher, who is the teacher of record;

(2) Receives concurrent instruction during the year described in paragraph (1) from the partner institution, which courses may be taught by LEA personnel or residency program faculty, in the teaching of the content area in which the teacher will become certified or licensed;

(3) Acquires effective teaching skills; and

(4) Prior to completion of the program—

(i) Attains full State certification or licensure and, with respect to special education teachers, meets the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)); and

(ii) Acquires a master's degree not later than 18 months after beginning the program.

Teaching skills means skills that enable a teacher to—

(1) Increase student learning, achievement, and the ability to apply knowledge;

(2) Effectively convey and explain academic subject matter;

(3) Effectively teach higher-order analytical, evaluation, problem-solving, and communication skills;

(4) Employ strategies grounded in the disciplines of teaching and learning that—

(i) Are based on empirically-based practice and scientifically valid research, where applicable, related to teaching and learning;

(ii) Are specific to academic subject matter; and

(iii) Focus on the identification of students' specific learning needs, particularly students with disabilities, students who are limited English proficient, students who are gifted and talented, and students with low literacy levels, and the tailoring of academic instruction to such needs;

(5) Conduct an ongoing assessment of student learning, which may include the

use of formative assessments, performance-based assessments, project-based assessments, or portfolio assessments, that measures higher-order thinking skills (including application, analysis, synthesis, and evaluation);

(6) Effectively manage a classroom, including the ability to implement positive behavioral interventions and support strategies;

(7) Communicate and work with parents, and involve parents in their children's education; and

(8) Use, in the case of an early childhood educator, age-appropriate and developmentally appropriate strategies and practices for children in early childhood education programs.

Underserved student means a student (which may include children in early learning environments and students in K–12 programs) in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner.

(5) A child or student with a disability.

(6) A disconnected youth.

(7) A technologically unconnected youth.

(8) A migrant student.

(9) A student experiencing homelessness or housing insecurity.

(10) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(11) A student who is in foster care.

(12) A student without documentation of immigration status.

(13) A pregnant, parenting, or caregiving student.

(14) A student impacted by the justice system, including a formerly incarcerated student.

(15) A student who is the first in their family to attend postsecondary education.

(16) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(17) A student who is working full-time while enrolled in postsecondary education.

(18) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(19) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

(20) A student performing significantly below grade level.

(21) A military- or veteran-connected student.

For purposes of the definition of *underserved student* only—

Child or student with a disability means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)); and

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Program Authority: 20 U.S.C. 1021–1022c.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474 (Uniform Guidance). (d) The EED NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $132,000,000 in discretionary funds for awards for the TQP program for FY 2022, of which we intend to use an estimated $35,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$2,000,000.

Estimated Average Size of Awards: $1,000,000 for the first year of the project. Funding for the second, third, fourth, and fifth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Maximum Award: We will not make an award exceeding $2,000,000 to any applicant per 12-month budget period.

Estimated Number of Awards: 25–30.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An eligible applicant must be an ''eligible partnership'' as defined in section 200(6) of the HEA. The term ''eligible partnership'' means an entity that—

(1) Must include—

(i) A high-need LEA;

(ii) (A) A high-need school or a consortium of high-need schools served by the high-need LEA; or

(B) As applicable, a high-need ECE program;

(iii) A partner institution;

(iv) A school, department, or program of education within such partner institution, which may include an existing teacher professional development program with proven outcomes within a four-year IHE that provides intensive and sustained collaboration between faculty and LEAs consistent with the requirements of title II of the HEA; and

(v) A school or department of arts and sciences within such partner institution; and

(2) May include any of the following:

(i) The Governor of the State.

(ii) The State educational agency (SEA).

(iii) The State board of education.
(iv) The State agency for higher education.
(v) A business.
(vi) A public or private nonprofit educational organization.
(vii) An educational service agency.
(viii) A teacher organization.
(ix) A high-performing LEA, or a consortium of such LEAs, that can serve as a resource to the partnership.
(x) A charter school.
(xi) A school or department within the partner institution that focuses on psychology and human development.
(xii) A school or department within the partner institution with comparable expertise in the disciplines of teaching, learning, and child and adolescent development.
(xiii) An entity operating a program that provides alternative routes to State certification of teachers.

Note: So that the Department can confirm the eligibility of the LEA(s) that an applicant proposes to serve, applicants must include information in their applications that demonstrates that each LEA to potentially be served by the project is a ''high-need LEA'' (as defined in this notice). Applicants should review the application package for additional information on determining whether an LEA meets the definition of ''high-need LEA.''

Note: An LEA includes a public charter school that operates as an LEA.

Note: As required by HEA section 203(a)(2), an eligible partnership may not receive more than one grant during a five-year period.

More information on eligible partnerships can be found in the TQP FAQ document on the program website at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-quality-partnership/applicant-info-and-eligibility/.*

2. a. *Cost Sharing or Matching:* Under section 203(c) of the HEA (20 U.S.C. 1022b(c)), each grant recipient must provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or in-kind, to carry out the activities supported by the grant. Applicants should budget their cost share or matching contributions on an annual basis for the entire five-year project period. Applicants must use the TQP Budget Worksheet to provide evidence of how they propose to meet their cost share or matching contributions for the entire five-year project period.

Consistent with 2 CFR 200.306(b) of the Uniform Guidance, any cost share or matching funds must be an allowable use of funds consistent with the cost principles detailed in Subpart E of the Uniform Guidance, and not included as a contribution for any other Federal award.

Section 203(c) of the HEA authorizes the Secretary to waive this cost share or matching requirement for any fiscal year for an eligible partnership if the Secretary determines that applying the cost share or matching requirement to the eligible partnership would result in serious hardship or an inability to carry out authorized TQP program activities. The Secretary does not, as a general matter, anticipate waiving this requirement in the future. Furthermore, given the importance of cost share or matching funds to the long-term success of the project, eligible entities must identify appropriate cost share or matching funds for the proposed five-year project period. Finally, the selection criteria include factors such as ''the adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization'' and ''the extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* SEAs, teachers' unions) critical to the project's long term success; or more than one of these types of evidence'' which may include a consideration of demonstrated cost share or matching support.

Note: The combination of Federal and non-Federal funds should equal the total cost of the project. Therefore, grantees are required to support no less than 50 percent of the total cost of the project with non-Federal funds. Grantees are strongly encouraged to take this requirement into account when requesting Federal funds. Grantees must budget their requests accordingly and must verify that their budgets reflect the costs allocations appropriately. (Cost Share or Matching Formula: Total Project Cost divided by two equals Federal Award Amount).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 202(k) of the HEA (20 U.S.C. 1022a(k)), funds made available under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities under this program. Additionally, the supplement-not-supplant requirement applies to all cost share or matching funds under the program.

c. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants to directly carry out project activities described in its application to the following types of entities: LEAs, SEAs, nonprofit organizations, or a business. The grantee may award subgrants to entities it has identified in an approved application.

4. *Other:*

a. *Limitation on Administrative Expenses:*

Under HEA section 203(d) (20 U.S.C. 1022b(d)), an eligible partnership that receives a grant under this program may not use more than two percent of the funds provided to administer the grant.

b. *General Application Requirements:*

All applicants must meet the following general application requirements in order to be considered for funding. The general application requirements are from HEA section 202(b) (20 U.S.C. 1022a(b)).

Each eligible partnership desiring a grant under this program must submit an application that contains—

(a) A needs assessment of the partners in the eligible partnership with respect to the preparation, ongoing training, professional development, and retention of general education and special education teachers, principals, and, as applicable, early childhood educators;

(b) A description of the extent to which the program to be carried out with grant funds, as described in the applicable absolute priority, will prepare prospective and new teachers with strong teaching skills;

(c) A description of how such a program will prepare prospective and new teachers to understand and use research and data to modify and improve classroom instruction;

(d) A description of—

(1) How the eligible partnership will coordinate strategies and activities assisted under the grant with other teacher preparation or professional development programs, including

programs funded under the ESEA and the IDEA, and through the National Science Foundation; and

(2) How the activities of the partnership will be consistent with State, local, and other education reform activities that promote teacher quality and student academic achievement;

(e) An assessment that describes the resources available to the eligible partnership, including—

(1) The integration of funds from other related sources;

(2) The intended use of the grant funds; and

(3) The commitment of the resources of the partnership to the activities assisted under this program, including financial support, faculty participation, and time commitments, and to the continuation of the activities when the grant ends;

(f) A description of—

(1) How the eligible partnership will meet the purposes of the TQP program as specified in section 201 of the HEA;

(2) How the partnership will carry out the activities required under the applicable absolute priority, based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(3) If the partnership chooses to use funds under this section for a project or activities under section 202(f) of the HEA, how the partnership will carry out such project or required activities based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(4) The partnership's evaluation plan under section 204(a) of the HEA;

(5) How the partnership will align the teacher preparation program with the—

(i) State early learning standards for ECE programs, as appropriate, and with the relevant domains of early childhood development; and

(ii) Challenging State academic standards under section 1111(b)(1) of the ESEA, established by the State in which the partnership is located;

(6) How the partnership will prepare general education teachers to teach students with disabilities, including training related to participation as a member of individualized education program teams, as defined in section 614(d)(1)(B) of the IDEA;

(7) How the partnership will prepare general education and special education teachers to teach students who are limited English proficient;

(8) How faculty at the partner institution will work during the term of the grant, with teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, in the classrooms of high-need schools served by the high-need LEA in the partnership to—

(i) Provide high-quality professional development activities to strengthen the content knowledge and teaching skills of elementary school and secondary school teachers; and

(ii) Train other classroom teachers to implement literacy programs that incorporate the essential components of reading instruction;

(9) How the partnership will design, implement, or enhance a year-long and rigorous teaching preservice clinical program component;

(10) How the partnership will support in-service professional development strategies and activities; and

(11) How the partnership will collect, analyze, and use data on the retention of all teachers and early childhood educators in schools and ECE programs located in the geographic area served by the partnership to evaluate the effectiveness of the partnership's teacher and educator support system; and

(g) With respect to the induction program required as part of the activities carried out under the applicable absolute priority—

(1) A demonstration that the schools and departments within the IHE that are part of the induction program will effectively prepare teachers, including providing content expertise and expertise in teaching, as appropriate;

(2) A demonstration of the eligible partnership's capability and commitment to, and the accessibility to and involvement of faculty in, the use of empirically based practice and scientifically valid research on teaching and learning;

(3) A description of how the teacher preparation program will design and implement an induction program to support, through not less than the first two years of teaching, all new teachers who are prepared by the teacher preparation program in the partnership and who teach in the high-need LEA in the partnership, and, to the extent practicable, all new teachers who teach in such high-need LEA, in the further development of the new teachers' teaching skills, including the use of mentors who are trained and compensated by such program for the mentors' work with new teachers; and

(4) A description of how faculty involved in the induction program will be able to substantially participate in an ECE program or elementary school or secondary school classroom setting, as applicable, including release time and receiving workload credit for such participation.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the TQP program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference additional regulations

outlining funding restrictions in the *Applicable Regulations* section of this notice.

Note: Tuition is not an allowable use of funds under this program.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of its intent to submit an application for funding by sending an email to *TQPartnership@ed.gov* with *FY 2022 TQP Intent to Apply* in the subject line. Applicants that do not send a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Quality of the project design* (up to 30 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(vi) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(b) *Quality of the project evaluation* (up to 20 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(ii) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(c) *Adequacy of resources* (up to 30 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* SEAs, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

(v) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(d) *Quality of the management plan* (up to 20 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2

CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:*

Under 34 CFR 75.110, the following measures will be used by the Department to evaluate the overall effectiveness of the grantee's project, as well as the TQP program as a whole:

(a) *Performance Measure 1: Certification/Licensure.* The percentage of program graduates who have attained initial State certification/licensure by passing all necessary licensure/certification assessments within one year of program completion.

(b) *Performance Measure 2: Shortage Area Certification.* The percentage of participating teachers fully certified in math/science, SPED, ELL, and other identified teacher shortage areas where program graduates that attain initial certification/licensure by passing all necessary licensure/certification assessments within one year of program completion, if applicable to the applicant or grantee's project.

(c) *Performance Measure 3: One-Year Persistence.* The percentage of program participants who were enrolled in the postsecondary program in the previous grant reporting period who did not graduate, and persisted in the postsecondary program in the current grant reporting period.

(d) *Performance Measure 4: One-Year Employment Retention.* The percentage of program completers who were employed for the first time as teachers of record in the preceding year by the partner high-need LEA or ECE program and were retained for the current school year.

(e) *Performance Measure 5: Three-Year Employment Retention.* The percentage of program completers who were employed by the partner high-need LEA or ECE program for three consecutive years after initial employment.

(f) *Performance Measure 6: Student Learning.* The percentage of grantees that report improved aggregate learning outcomes of students taught by new teachers. These data can be calculated using student growth, a teacher evaluation measure, or both. (This measure is optional and not required as part of performance reporting.)

(g) *Efficiency Measure:* The Federal cost per program completer. (These data will not be available until the final year of the project period.)

Note: If funded, grantees will be asked to collect and report data on these measures in their project's annual

performance reports (34 CFR 75.590). Applicants are also advised to consider these measures in conceptualizing the design, implementation, and evaluation of their proposed projects because of their importance in the application review process. Collection of data on these measures should be a part of the evaluation plan, along with measures of progress on goals and objectives that are specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

Applicants must also address the evaluation requirements in section 204(a) of the HEA (20 U.S.C. 1022c(a)). This section asks applicants to develop objectives and measures for increasing—

(1) Achievement for all prospective and new teachers, as measured by the eligible partnership;

(2) Teacher retention in the first three years of a teacher's career;

(3) Improvement in the pass rates and scaled scores for initial State certification or licensure of teachers; and

(4) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA participating in the eligible partnership;

(5) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who are members of underrepresented groups;

(6) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach high-need academic subject areas (such as reading, mathematics, science, and foreign language, including less commonly taught languages and critical foreign languages);

(7) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need areas (including special education, language instruction educational programs for limited English proficient students, and early childhood education);

(8) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need schools, disaggregated by the elementary school and secondary school levels;

(9) As applicable, the percentage of ECE program classes in the geographic area served by the eligible partnership taught by early childhood educators who are highly competent; and

(10) As applicable, the percentage of teachers trained—

(i) To integrate technology effectively into curricula and instruction, including technology consistent with the principles of universal design for learning; and

(ii) To use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of improving student academic achievement.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether the grantee has met the required non-Federal cost share or matching requirement; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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H.R. 1281/P.L. 117–89
To name the Department of Veterans Affairs community-based outpatient clinic in Gaylord, Michigan, as the ''Navy Corpsman Steve Andrews Department of Veterans Affairs Health Care Clinic''. (Feb. 23, 2022; 136 Stat. 25)

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