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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0146]

Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive off and on-loading to Military Ocean Terminal Concord (MOTCO) from March 3 through March 8, 2022. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port (COTP) San Francisco or a designated representative.

DATES: The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on March 3, 2022, until 11:59 p.m. on March 8, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade William Harris, Coast Guard Sector San Francisco, Waterways Management Division, 415–399–7443, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on March 3, 2022, until 11:59 p.m. on March 8, 2022, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W and 3,000 yards of the pier. During the enforcement periods, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415–556–2760 or VHF Channel 14 to obtain permission.

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

Dated: February 24, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2022–04343 Filed 3–1–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0893]

RIN 1625–AA87

Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain waters of the Gastineau Channel. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by a Navy diving exercise involving remotely operated vehicles (ROVs) and accompanying divers on these navigable waters between the Juneau-Douglas Bridge and Savikko Park near Juneau, AK, from March 6, 2022, through March 17, 2022. This regulation prohibits persons and vessels from being in the security zone unless authorized by the Captain of the Port Southeast Alaska or a designated representative.

DATES: This rule is effective from March 6, 2022, through March 17, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0893 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Jesse Collins, Waterways Management Division, U.S. Coast Guard; telephone 907–463–2846, email *Jesse.O.Collins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port Southeast Alaska
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
ROV(s) Remotely Operated Vehicle(s)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Department of Navy notified the Coast Guard that it will be conducting a diving exercise from 6 a.m. to 6 p.m., each day from March 6, 2022, through March 17, 2022, along the entire length of the Gastineau Channel. Hazards associated with the exercise include collision and damage to remotely operated vehicles (ROVs) and collision and injury to divers in the water. In response, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK'' (87 FR 6450). We stated there why we issued the NPRM and invited comments on our proposed regulatory

action related to this diving exercise. During the comment period that ended February 14, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with this diving exercise.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the diving exercise will be a safety concern for anyone within a 200-yard radius of the Navy vessel displaying the Alpha (''Dive'') flag in the Gastineau Channel. The purpose of this rule is to ensure safety of vessels and the navigable waters in the security zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on February 4, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a security zone from March 6, 2022, through March 17, 2022. The security zone will cover all navigable waters within 200 yards of a Navy vessel displaying the Alpha (''Dive'') flag in the Gastineau Channel. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the diving exercise. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and time of day of the security zone. Traffic is limited during the time of year when the security zone will be in effect. As a moving security zone assigned to a Navy vessel rather than a defined area of water, the impact to the waterway will be minimized. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves a security zone lasting 12 hours for twelve days that will prohibit entry within 200 yards of a Navy vessel displaying the Alpha (''Dive'') flag in the Gastineau Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–0893 to read as follows:

§ 165.T17–0893 Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK.

(a) *Location.* The following area is a security zone: All the waters in Juneau Harbor and along the Gastineau Channel within a 200-yard radius of a Navy vessel displaying the Alpha (''Dive'') flag.

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

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Juneau.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this security zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 907–463–2980 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section is effective from March 6, 2022, through March 17, 2022, but will only be subject to enforcement from 6 a.m. to 6 p.m. each day.

Dated: February 25, 2022.

D.A. Jensen,

Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.

[FR Doc. 2022–04390 Filed 3–1–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0069]

RIN 1625–AA00

Safety Zone; Jackson Fireworks Scattering; Yellow Bluff San Francisco Bay, Sausalito, CA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay near Yellow Bluff in Sausalito, CA, in support of a fireworks display on March 26, 2022. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 6 p.m. until 8:45 p.m. on March 26, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0069 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Anthony I. Solares, Coast Guard Sector San Francisco, at 415–399–3585, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until January 25, 2022. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by March 26, 2022 and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display near Yellow Bluff on

the San Francisco Bay on March 26, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Jackson Fireworks Scattering on March 26, 2022, will be a safety concern for anyone within a 100-foot radius of the fireworks vessel during loading and staging, and anyone within a 500-foot radius of the fireworks vessel starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks vessel and during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 6 p.m. until 8:45 p.m. on March 26, 2022, during the loading, staging, and transit of the fireworks vessel in San Francisco Bay from Clipper Yacht Harbor to 500 yards off Yellow Bluff, Sausalito, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks vessel scheduled to take place between 6 p.m. and 6:15 p.m. on March 26, 2022, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connection of all points 100 feet out from the fireworks vessel. The fireworks display is scheduled to start from 8 p.m. and end at approximately 8:15 p.m. on March 26, 2022, 500 yards from Yellow Bluff in Sausalito, CA.

The fireworks vessel will remain at Clipper Yacht Harbor until the start of its transit to the display location. Movement of the vessel from Clipper Yacht Harbor to the display location is scheduled to take place from 7:15 p.m. to 8 p.m. on March 26, 2022, where it will remain until the conclusion of the fireworks display.

At 7:30 p.m. on March 26, 2022, 30 minutes prior to the commencement of the 15-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by all connecting points 500 feet from the circle center at approximate position 37°50′12″ N, 122°28′01″ W (NAD 83). The safety zone will terminate at 8:45 p.m. on March 26, 2022 or as announced via Broadcast Notice to Mariners.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the Captain of the Port San Francisco (COTP) or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks near Clipper Yacht Harbor and 500 yards off Yellow Bluff in San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–088 to read as follows:

§ 165.T11–088 Safety Zone; Jackson Fireworks Scattering, Yellow Bluff San Francisco Bay, Sausalito, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel during loading and staging at Clipper Yacht Harbor in Sausalito, CA, as well as transit and arrival 500 yards off of Yellow Bluff, Sausalito, CA. Between 7:15 p.m. and 8:45 p.m. on March 26, 2022, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connection all points 500 feet out from the fireworks vessel in approximate position 37°50′12″ N, 122°28′01″ W (NAD 83) or as announced via Broadcast Notice to Mariners.

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

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

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 6 p.m. until 8:45 p.m. on March 26, 2022.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with § 165.7.

Dated: February 24, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2022–04344 Filed 3–1–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Great Lakes St. Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA52

Tariff of Tolls

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2022 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff for full or partial transit of the Seaway will apply in the U.S. (See **SUPPLEMENTARY INFORMATION**). The Tariff of Tolls will be effective on March 21, 2022 in Canada.

DATES: This rule is effective on March 2, 2022.

ADDRESSES: *Docket:* For access to the docket to read background documents

or comments received, go to *https://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Great Lakes St. Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising 33 CFR 402.12, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2022 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the GLS on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)).

The GLS is amending 33 CFR 402.12, ''Schedule of tolls'', to increase the minimum charge per vessel per lock for full or partial transit of the Seaway from $29.72 to $30.31. This charge is for vessels that are not pleasure craft or subject in Canada to the tolls under items 1 and 2 of the Tariff. This increase is due to higher operating costs at the locks.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://dms.dot.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore, Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Great Lakes St. Lawrence Seaway Development Corporation amends 33 CFR part 402 as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 is revised to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.101.

■ 2. Revise § 402.12 to read as follows:

§ 402.12 Schedule of tolls.

TABLE 1 TO § 402.12

Column 1	Column 2	Column 3
Item—description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) A charge per gross registered ton (GRT) of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time [1]		
(a) all vessels excluding passenger vessels	0.1171	0.1874.
(b) passenger vessels	0.3514	0.5621.
(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(*a*) Bulk cargo	1.2142	0.8288.
(*b*) general cargo	2.9258	1.3265.
(*c*) steel slab	2.6480	0.9496.

TABLE 1 TO § 402.12—Continued

Column 1	Column 2	Column 3
Item—description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
(*d*) containerized cargo	1.2142	0.8288.
(*e*) government aid cargo	n/a	n/a.
(*f*) grain	0.7460	0.8288.
(*g*) coal	0.7460	0.8288.
(3) a charge per passenger per lock	0.0000	0.0000.
(4) a lockage charge per gross registered ton of the vessel, as defined in item 1(1), applicable whether the ship is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo ships,	n/a	0.3122.
Up to a maximum charge per vessel	n/a	4,367.
2. Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).
3. Minimum charge per vessel per lock transited for full or partial transit of the Seaway.	30.31 [2]	30.31.
4. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable Federal taxes [3].	30.00 [4]	30.00.
5. Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period.	20%	20%.
6. Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume.	10%	10%.
7. Under the New Service Incentive Program, for New Business cargo moving under an approved new service, an additional percentage refund on applicable cargo tolls above the New Business rebate.	20%	20%.

[1] Or under the US GRT for vessels prescribed prior to 2002.
[2] The applicable charged under item 3 at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). The other charges are in Canadian dollars and are for the Canadian share of tolls.
[3] $5.00 discount per lock applicable on ticket purchased for Canadian locks via PayPal.
[4] The applicable charge at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock.

Issued at Washington, DC.

Great Lakes St. Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2022–04219 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–61–P

POSTAL SERVICE

39 CFR Part 111

Extended Mail Forwarding Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section 507.2.0 to add a new product offering that will allow customers to extend mail forwarding service.

DATES: *Effective Date:* July 10, 2022.

FOR FURTHER INFORMATION CONTACT: Iwon Kaiyuan at (202) 268–4899 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The DMM currently provides that customers who submit a permanent change-of-address (COA) request generally receive mail forwarding service for 12 months at no cost. After the 12-month forwarding period, the mail is returned to the sender or disposed of by the USPS®.

The Postal Service initiated a Market Test, Extended Mail Forwarding service, (Docket No. MT2020–2, PRC Order No. 5591) on July 20, 2020, to provide customers with an option to extend their forwarding service for a fee. Extended Mail Forwarding service provides customers the option to extend forwarding service beyond the 12-month period in six-month increments or by an additional 6, 12, or 18 months, or any combination, not to exceed 18 months. Customers can extend a permanent COA order by purchasing Extended Mail Forwarding service at a Post Office or online through the COA Application (MoversGuide) on *USPS.com.*

On February 14, 2022, the Postal Service filed a request with the Postal Regulatory Commission to make the Extended Mail Forwarding service market test a permanent offering. Documents pertinent to the request are available in Docket No. MC–2022–40.

The Postal Service believes this new offering will provide customers with a service that will enhance their mailing experience.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

2.0 Forwarding

2.1 Change-of-Address Order

2.1.1 Normal Time Limit

[Revise the text of 2.1.1 to read as follows:]

2.1.1 Normal Time Limit

Records of change-of-address orders are kept by Post Offices for forwarding and for address correction purposes as follows:

a. A record of permanent change-of-address orders is kept by Post Offices for 18 months, from the end of the month when the change takes effect. Generally, forwarding is available for the first 12 months, see 1.5, 1.6, and 1.7 for additional information.

b. A record of change-of-address orders from general delivery to a permanent local address without time limit is kept 6 months.

c. A record of change-of-address orders to other than a permanent local address is kept 30 days.

[Revise the heading and text of 2.1.2 to read as follows:]

2.1.2 Extended Mail Forwarding Service

Customers may extend a permanent change-of-address order for up to an additional 18 months of forwarding by purchasing Extended Mail Forwarding service at a Post Office or online through the Change of Address Application (MoversGuide) on USPS.com. Extended Mail Forwarding service may be purchased in six month increments or by an additional 6, 12, or 18 months, or any combination, not to exceed 18 months. See Notice 123—Price List for fees.

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Index

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[Add ''Extended Mail Forwarding Service'' alphabetically under ''E''.]

* * * * *

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–04308 Filed 3–1–22; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–73; RM–11889; DA 22–179; FR ID 73960]

Television Broadcasting Services Toledo, Ohio

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 22, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Dominion Broadcasting, Inc. (Petitioner), the licensee of WLMB, channel 5, Toledo, Ohio, requesting the substitution of channel 35 for channel 5 at Toledo in the Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends Federal Communications Commission (Commission or FCC) regulations to substitute channel 35 for channel 5 at Toledo.

DATES: Effective March 2, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 15181 on March 22, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 35. In support of its channel substitution request, the Petitioner states that the Commission has recognized the deleterious effects manmade noise has on the reception of digital VHF signals, and that the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances compared to UHF channels, and also allow nearby electrical devices to cause interference. While the proposed channel 35 facility is predicted to result in loss of service to 15,460 persons, all but approximately 100 of those persons would continue to receive service from at least five other television stations, and no persons would receive service from fewer than four other television stations. The Commission is generally most concerned where there is a loss of an area's only network or non-commercial educational (NCE) TV service, or where the loss area results in an area becoming less than well-served, *i.e.,* served by fewer than five full-power over-the-air signals. As a result, the loss area will continue to remain well-served and the number of persons that will receive less than five signals (approximately 100 persons) is considered to be *de minimis.*

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–73; RM–11889; DA 22–179, adopted February 18, 2022, and released February 22, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments, under Ohio, by revising the entry for Toledo to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
OHIO	
* * *	* *
Toledo	11, 13, 23, 26, *29, 35

[FR Doc. 2022–04311 Filed 3–1–22; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case 2020–G537; Docket No. 2022–0008; Sequence No. 1]

RIN 3090–AK32

General Services Administration Acquisition Regulation (GSAR); Order Level Material Clarifications

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to remove unnecessary language regarding approvals and travel and to correct citation and acronym references relating to order level materials.

DATES: *Effective:* April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Huppee or Mr. Bryon Boyer, GSA Acquisition Policy Division, for clarification of content at *gsarpolicy@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2020–G537.

SUPPLEMENTARY INFORMATION:

I. Background

Order Level Materials (OLMs) are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of FSS contract or FSS BPA award. OLMs must be acquired following the procedures in GSAR subpart 538.72. OLMs are currently approved for 59 subcategories under FSS contracts, see *https://www.gsa.gov/olm.* The GSAR currently requires the Senior Procurement Executive's (SPE) authorization for further use of OLMs under FSS. GSA is removing this requirement from the GSAR to provide revised internal operating guidance in the non-regulatory GSA Acquisition Manual (GSAM).

GSA is removing references from the OLM clause at 552.238–115 to the Federal Travel Regulation (FTR) because those references unnecessarily conflate travel as being an order level material and complicate the procedures for ordering activities and contracting officers.

GSA is also updating the GSAR to accurately reflect terminology, acronyms, citations, and references in conformance with the new consolidated FSS schedule procedures (more information available at: *https://www.gsa.gov/schedule*).

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

After an internal review of existing policy, GSA is removing the requirement for GSA SPE authorization for use of OLMs on FSS, because it is unnecessary and administratively burdensome to the agency. Revised operating guidance which will provide for a lower level of approval, will now be provided in the non-regulatory GSAM, because these are internal procedures only, and as a result references to changes to OLM procedures are removed from the GSAR.

GSAR clause 552.238–115, Special Ordering Procedures for the Acquisition of Order-Level Materials prescribes procedures for including OLMs when placing an order against an FSS contract or FSS BPA and references travel. The reference to travel in the clause, implying that it is an OLM, has caused confusion for contracting officers. To simplify acquisition procedures, this final rule removes travel from the OLM clause to allow ordering activities and contractors to include travel at the order level in accordance with Federal Acquisition Regulations Part 31 and may also include requirements from the FTR.

IV. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by OMB not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

OIRA has determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offers, the rule merely corrects citation

references, removes confusing references for travel, and removes inconsistent language for authorizations for OLMs.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

538.7201 [Removed and Reserved]

■ 2. Remove and reserve section 538.7201.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.238–115 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition of ''Order-level materials'' by removing the words ''*materials* means'' and adding ''*materials,* as used in this clause'' and in the third sentence removing the phrase ''this section'' and adding the phrase ''this clause'' in its place;

■ c. Revising paragraph (d)(2);

■ d. Removing from paragraph (d)(4) the phrase ''FSS contract'', and adding the phrase ''FSS Contract,'' in its place.

■ e. Removing from paragraph (d)(6) the phrase ''follow procedures'' and adding the phrase ''follow the procedures'' in its place;

■ f. Removing from paragraph (d)(7)(i) introductory text the word ''contractor'' and adding the word ''Contractor'' in its place;

■ g. Removing from paragraph (d)(7)(i)(A) the phrase ''contractor under FAR 52.212–4 Alt I (i)(1)(ii)(A)'' and adding the phrase ''Contractor under paragraph (i)(1)(ii)(A) of FAR clause 52.212–4 Alternate I'' in its place;

■ h. Removing from paragraph (d)(7)(i)(B) the word ''contractor'' and adding the word ''Contractor'' in its place wherever it appears, and removing the word ''its'';

■ i. Revising paragraph (d)(7)(i)(C);

■ j. Removing from paragraph (d)(7)(iii) the phrase ''FAR 52.212–4(i)(1)(ii)(D)(2) Alternate I'' and adding the phrase ''paragraph (i)(1)(ii)(D)(2) of FAR clause 52.212–4 Alternate I'' in its place;

■ k. Removing from paragraph (d)(9) the phrases ''by GSA'' and ''compliance with the IFF'' and adding the phrases ''by GSA (Federal Supply Schedules)'' and ''compliance with the Industrial Funding Fee (IFF)'' in their places respectively;

■ l. Removing from paragraph (d)(10) introductory text the phrase ''OLMs'' and adding the phrase ''Order-level materials'' in its place;

■ m. Removing from paragraph (d)(10)(ii) the phrase ''FSS Schedule Pricelists'' and adding ''Federal Supply Schedule (FSS) Price Lists'' in its place; and

■ n. Removing paragraph (d)(11).

The revisions read as follows:

552.238–115 Special Ordering Procedures for the Acquisition of Order-Level Materials

* * * * *

Special Ordering Procedures for the Acquisition of Order-Level Materials (Apr 2022)

* * * * *

(d) * * *

(2) Order-level materials are included in the definition of the term ''material'' in FAR clause 52.212–4 Alternate I, and, therefore, all provisions of FAR clause 52.212–4 Alternate I that apply to ''materials'' also apply to order-level materials.

* * * * *

(7) * * *

(i) * * *

(C) A Contractor with an approved purchasing system, per FAR subpart 44.3, shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A) and (B) of this clause.

* * * * *

[FR Doc. 2022–04287 Filed 3–1–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 220223–0053]

RIN 0648–BL26

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Temporary rule; emergency final rule.

SUMMARY: NMFS is implementing a temporary emergency rule to prohibit trap/pot fishery buoy lines between Federal and State waters within the Massachusetts Restricted Area during the month of April 2022 to reduce the incidental mortality and serious injury to North Atlantic right whales (*Eubalaena glacialis*) in commercial lobster and Jonah crab trap/pot fisheries. This emergency rule is necessary to reduce the risk of right whale mortality and serious injury in buoy lines in an area with a high co-occurrence of whales and buoy lines.

DATES: Effective April 1, 2022, through April 30, 2022.

ADDRESSES: Copies of the documents associated with this emergency rule are available at *https://www.fisheries.noaa.gov/alwtrp* or by emailing Marisa Trego at *marisa.trego@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Marisa Trego, 978–282–8484, *marisa.trego@noaa.gov,* Colleen Coogan, 978 281–9181, *colleen.coogan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic right whale (*Eubalaena glacialis,* hereafter referred to as right whale) population has been in decline since 2010, with the most recent published estimate of right whale population size in 2019 at 368 whales (±11) with a strong male bias (Pace et al. 2017, Pace 2021). Preliminary 2020 and 2021 data suggest the decline has continued and that fewer than 350 individuals remain (Pettis et al. 2022). Though this population estimate is not final and still undergoing final peer review, it relies upon the same peer-reviewed population models used in

Pace et al. (2017) and Pace (2021) and is not expected to change significantly in the final publication. The steep population decline is a result of high levels of human-caused mortality caused by entanglement in fishing gear and vessel strikes in both the U.S. and Canada. An Unusual Mortality Event, as defined in section 410 of the Marine Mammal Protection Act (MMPA), was declared for the population in 2017 as a result of high rates of entanglement in fishing gear and vessel strikes. As of January 2022, the Event includes 34 detected mortalities (17 in 2017, 3 in 2018, 10 in 2019, 2 in 2020, and 2 in 2021). In 2020, 16 serious injuries were documented (2 in 2017, 5 in 2018, 1 in 2019, 4 in 2020, and 4 in 2021; see: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event*). Mortality is higher than what has been observed, according to population models that estimate that 64 percent of all mortalities are not observed and accounted for in the right whale observed incident data (Pace 2021, Pace et al. 2021).

The North Atlantic right whale is listed as an endangered species under the Endangered Species Act, and considered a strategic stock under the Marine Mammal Protection Act (MMPA). NMFS is required by the MMPA to reduce the risk of serious injury and death caused by entanglement in commercial fishing gear to a rate below the potential biological removal level (PBR), prescribed as the maximum number of animals that can be removed annually while allowing a marine mammal stock to reach or maintain its optimal sustainable population level. PBR for the North Atlantic right whale population was 0.7 whales per year in the most recently published draft stock assessment report (NMFS 2021a). Between 2010 and 2021, there has only been one year where observed mortality and serious injury of right whales fell below the PBR at the time, which was an individual with a partial serious injury given a prorated quantity of 0.75. With the total estimated mortality well above PBR, additional measures are urgently needed to reduce the impact of U. S. Atlantic fisheries on right whales.

The Atlantic Large Whale Take Reduction Plan (Plan) was originally developed pursuant to section 118 of the MMPA (16 U.S.C. 1387) to reduce mortality and serious injury of three stocks of large whales (fin, humpback, and North Atlantic right) incidental to Category I and II fisheries. Under the MMPA, a strategic stock of marine mammals is defined as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) of 1973 within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA (16 U.S.C. 1362(19)). When incidental mortality or serious injury of marine mammals from commercial fishing exceeds a stock's PBR level, the MMPA directs NMFS to convene a take reduction team made up of stakeholders, including: representatives of Federal agencies; each coastal state which has fisheries which interact with the species or stock; appropriate Regional Fishery Management Councils; interstate fisheries commissions, academic and scientific organizations; environmental groups; all commercial and recreational fisheries groups and gear types which incidentally take the species or stock; and, if relevant, Alaska Native organizations or Indian tribal organizations.[1]

The Atlantic Large Whale Take Reduction Team (ALWTRT) was established in 1996 and has 60 members, including about 22 trap/pot and gillnet fishermen or fishery representatives. The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the initial plan. The Team met and recommended modifications to the Plan, implemented by NMFS through rulemaking, several times since 1997 in an ongoing effort to meet the MMPA take reduction goals.

Mortalities and serious injuries of right whales in U.S. fishing gear and first seen in U.S. waters at levels above PBR have continued. NMFS informed the Team in late 2017 that it was necessary to reconvene to develop recommendations to reduce the impacts of U.S. commercial fisheries on large whales with a focus on reducing risk to the declining North Atlantic right whale population. During a Team meeting in April 2019, the Team recommended a framework of measures to modify lobster and Jonah crab trap/pot trawls within the Northeast Region Trap/Pot Management Area (Northeast Region). The recommended measures intended to reduce risk of mortality and serious injury to right whales incidentally entangled in buoy lines in those fisheries by at least 60 percent, which was the best estimate at the time of the minimum amount of risk necessary to get annual severe entanglement rates below PBR based on observed entanglement incidents. NMFS published a Final Environmental Impact Statement (FEIS) on July 2, 2021 (86 FR 35288), with a 30-day comment period. The Record of Decision was signed on August 30, 2021, and the final rule was published on September 17, 2021 (86 FR 51970). The new rule was estimated to meet the minimum 60-percent reduction in risk recommended by the Team in 2019. Greater detail on right whale population estimates, the stock's decline, changes in distribution and reproductive rates, and entanglement-related mortalities and serious injuries documented in recent years can be found in Chapters 2 and 4 of the FEIS (NMFS 2021b) and the preamble to the 2021 final rule (86 FR 51970).

Justification for Emergency Action

New population information published since the 2019 Team meeting and recent 2021 final rule suggest that a greater amount of risk reduction is needed to reduce mortality and serious injury of right whales in U.S. commercial fisheries below PBR, as required by the MMPA. NMFS presented the new minimum risk reduction needed to the team in a webinar on November 2, 2021, estimating an increase from the minimum of 60-percent risk reduction estimated in Phase 1 based on observed incidents, to at least a 90-percent total risk reduction based on estimated mortality. Phase 1 is intended to achieve an estimated 60-percent reduction in entanglement risk from Northeast lobster and Jonah crab trap pot fisheries, which make up approximately 93 percent of fixed gear buoy lines in the right whale range within U.S. waters. A rulemaking process for Phase 2 modifications to the Plan began on August 11, 2021, with a Notice of Intent to prepare an Environmental Impact Statement that aims to further reduce risk in all fisheries covered under the plan coastwide. However, a single mortality or serious injury of a North Atlantic right whale in a U.S. fishery would exceed PBR. Therefore, observations in 2021 and new information submitted to NMFS merit emergency measures in an area of anticipated acute risk of entanglement

[1] There are no Alaska Native or Indian tribal organizations participating in fisheries managed under the Atlantic Large Whale Take Reduction Team.

to the population while long-term measures are being developed.

One measure included in the 2021 final rule (86 FR 51970, September 17, 2021) has left a critical gap in protection where right whale distribution information identifies a high risk of overlap between right whales and buoy lines. Right whale monthly distribution data identifies risk in unrestricted waters encapsulated on three sides by the expanded Massachusetts Restricted Area (MRA) during the month of April. The 2021 expansion of the geographic extent of the MRA to include Massachusetts State waters north to the New Hampshire border (MRA Expansion, Figure 1) mirrors the Massachusetts 2021 modification of the State water closure (322 CMR 12.04(2)). With the implementation of the MRA Expansion, approximately 200 square miles (518 square kilometers) of Federal waters remain open to trap/pot fishing between State and Federal closures creating a wedge where 2021 data indicate that trap/pot gear is concentrated during the closure period (MRA Wedge, Figure 2). During aerial surveys in April 2021, the Center for Coastal Studies (CCS) observed right whales within this wedge alongside the presence of aggregated fishing gear (Figure 2). The gear in this area is thought to be a mix of actively fished gear and staged gear that is placed in preparation for Federal waters within the MRA to open in May. In addition, during April, fishermen anticipating the May 1 opening of Federal waters of the MRA may start bringing gear offshore to prepare to move into the MRA. This, in addition to the gear from fishermen already actively fishing outside of the buoy line closure area, increases gear density in the area. Finally, weak insertion requirements that reduce risk of serious entanglements included in the 2021 final rule will not yet be required in Federal waters until May 1, 2022. Given the dense concentration of high-strength vertical lines in an area with persistent right whale presence, this wedge area presents an imminent entanglement threat.

BILLING CODE 3510–22–P

Figure 1: The Massachusetts Restricted Area expansion (hatched area) of the original closure area (solid gray) was closed by Massachusetts State in Spring of 2021 and mirrored in the Atlantic Large Whale Take Reduction Plan in Fall of 2021.

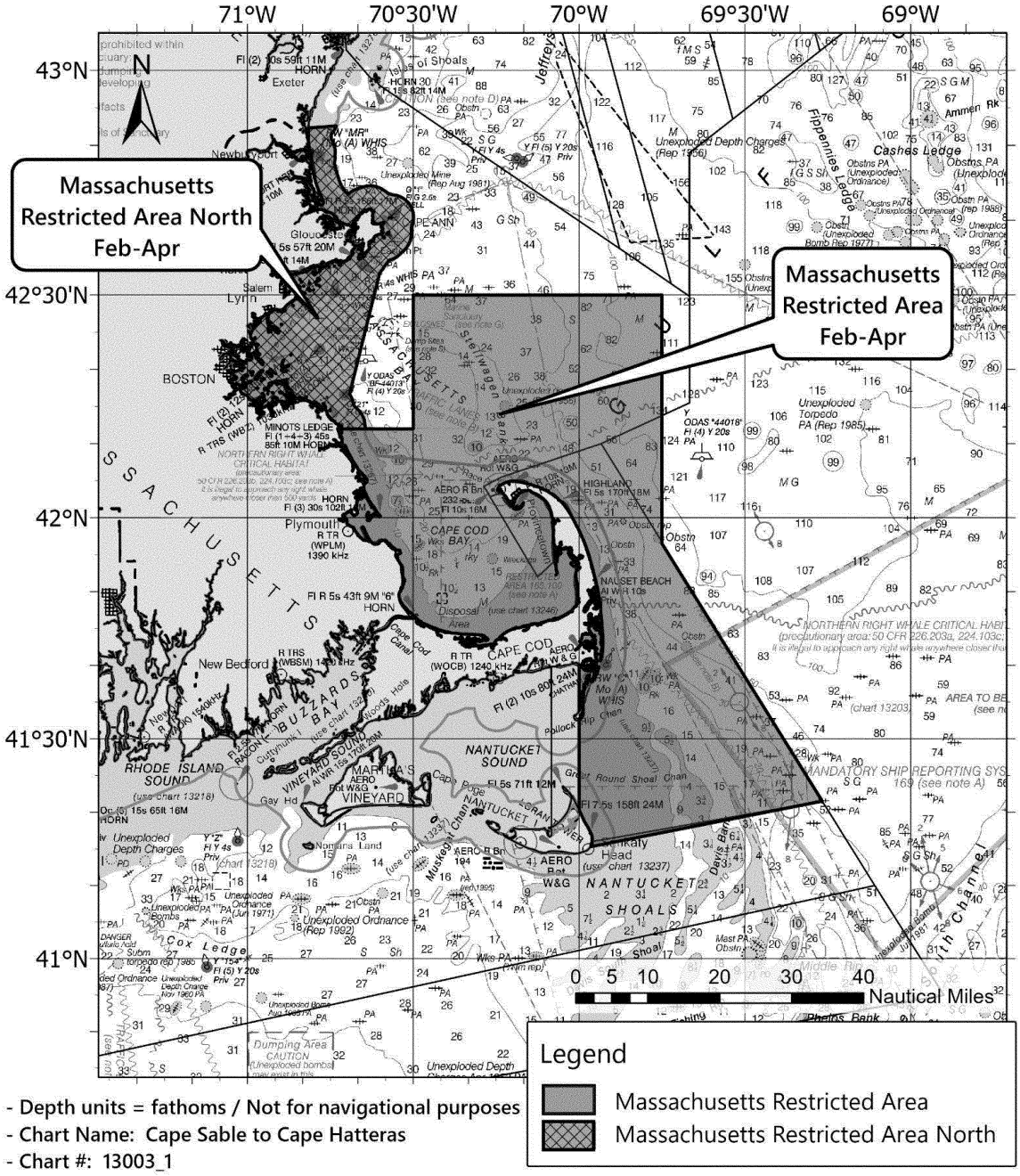
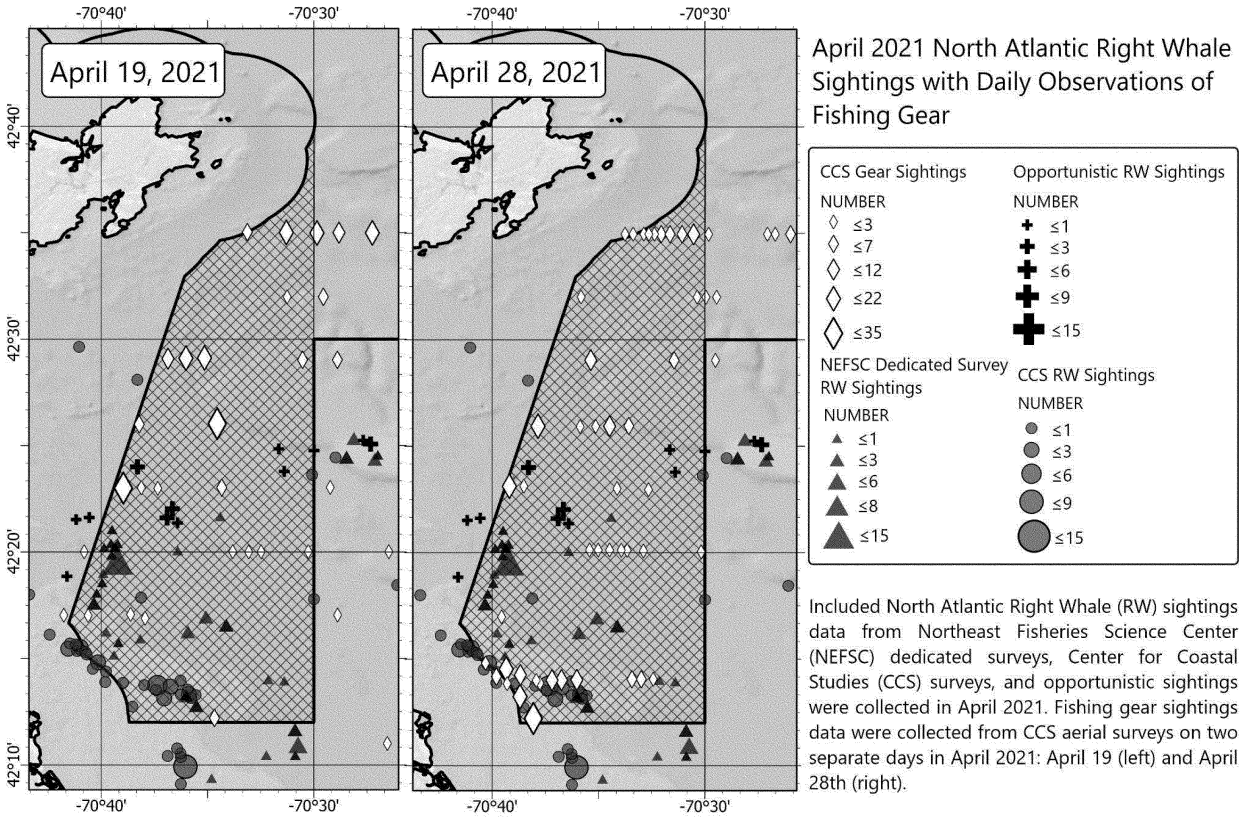


Figure 2: The area closed by this emergency rule is the hatched area. Sightings of whales during April 2021 (gray and black shapes) and gear observed on two different days are overlaid. Right whale sightings from the Center for Coastal Studies aerial surveys are represented by gray circles, gray triangles show Northeast Fishery Science Center (NEFSC) dedicated aerial and shipboard surveys, and black crosses are opportunistic sightings collected by NEFSC. Fishing gear (white diamonds) observed by the Center for Coastal Studies on April 19, 2021, and April 28, 2021, were selected as representative snapshots of fishing gear present in survey areas. Surveys concentrate on Cape Cod Bay; surveyors rarely fly north of mid Cape Ann, offshore Rockport, MA. These maps are used for qualitative not quantitative comparison, and differ from Decision Support Tool data.



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Emergency Measures

This emergency rule implements a fishery closure in the waters nearly circumscribed by Federal and State waters of the MRA, where the use of persistent trap/pot buoy lines is prohibited in April 2022 (Figure 2). This closure period is only a portion of the existing MRA closure season as implemented in the 2021 final rule (86 FR 51970, September 17, 2021), which is closed as of February 1 and continues through April 30 in Federal waters, and in Massachusetts State waters February 1 through May 15 with an option to open earlier or close later, depending on right whale occurrence under State regulations (322 CMR 12.04(2)). Risk reduction and change in right whale co-occurrence were calculated for this emergency measure using the same version of the Decision Support Tool (V 3.1.0) that was used in the 2021 FEIS (NMFS 2021b). The area restricted by this emergency rule includes approximately 200 square miles (518 square kilometers and represents about 2.2 percent of the pre-final rule risk of Northeast lobster and Jonah crab trap/pot fisheries. Closure of this area to buoy lines in April would result in 2- to 2.2-percent risk reduction, and 1.3- to 1.5-percent reduction in co-occurrence with right whales, depending on whether gear is relocated or removed, respectively. When combined with the 2021 final rule (86 FR 51970, September 17, 2021), this one-month closure adds at least an additional 1.6-percent risk reduction due to the interactive effects of an added closure during April with other measures that weaken, reduce, or relocate buoy lines. Though this additional reduction seems small, it offers measurable reduction in a relatively small area for a very short time period.

The Decision Support Tool used to estimate risk reduction of these

measures relies on whale distribution data through 2018 and line estimates from recent years before the new seasonal restricted area was implemented. These data likely underestimate the risk reduction given 2020 and 2021 observations of right whale distribution and the 2021 restrictions may have pushed more gear into this area. Furthermore, the right whale habitat density model produced by Duke University and used within the Decision Support Tool estimates that approximately 4.6 whales are likely to be present in this locality during the month of April, but observation data collected during April 2021 suggest that in 2022 there may be more right whales in the area than the model predicts (Figure 2). Given the empirical evidence collected in 2021, it is likely that the risk reduction estimated in this small area may have even greater value to the right whale population than the percent reduction suggests, particularly in years when right whale aggregations are high.

The economic impact of an April fishery closure to lobster and Jonah crab trap/pot buoy lines is estimated to be small relative to the total value of the fishery. It is estimated to impact approximately 37 vessels and represents a landing value of approximately $2,210 per vessel for a total cost of $82,869. This estimate is a worse-case scenario that assumes the gear is removed rather than relocated elsewhere. The number of vessels impacted was calculated from the average number of vessels fishing within the MRA Wedge during April from 2015 to 2019 according to Vessel Trip Report (VTR) data, and was adjusted based on the average percentage of Lobster Management Area 1 lobster-only vessels required to provide VTR data in Massachusetts, which is 42 percent. Landing values were similarly averaged for April using landing pounds from VTR data and April lobster prices in Massachusetts from dealer reports.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Plan, with the emergency rulemaking authority under section 118(g) of the Marine Mammal Protection Act (MMPA), and with other applicable laws. Further evaluation of this authority and environmental impacts can be found at *https://www.fisheries.noaa.gov/alwtrp.* This emergency rule has been determined to be not significant for the purposes of Executive Order 12866.

This emergency final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule will not include prior notice or an opportunity for public comment.

This emergency final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds prior notice and public comment is not required because it would be impracticable and contrary to the public interest. Right whale monthly distribution data identifies risk in unrestricted waters encapsulated on three sides by the expanded Massachusetts Restricted Area (MRA) during the month of April. The 2021 expansion of the geographic extent of the MRA to include Massachusetts State waters north to the New Hampshire border (MRA Expansion, Figure 1) mirrors the Massachusetts 2021 modification of the State water closure (322 CMR 12.04(2)). With the implementation of the MRA Expansion, approximately 200 square miles (518 square km) of Federal waters remain open to trap/pot fishing between State and Federal closures creating a wedge where 2021 data indicates that trap/pot gear is concentrated during the closure period (MRA Wedge, Figure 2). During aerial surveys in April 2021, the Center for Coastal Studies (CCS) observed right whales within this wedge alongside the presence of aggregated fishing gear (Figure 2). The gear in this area is thought to be a mix of actively fished gear and staged gear that is placed in preparation for Federal waters within the MRA to open in May. In addition, during April fishermen anticipating the May 1 opening of Federal waters of the MRA may start bringing gear offshore to prepare to move into the MRA. This, in addition to the gear from fishermen already actively fishing outside of the buoy line closure area, could increase gear density in the area. Finally, weak insertion requirements that reduce risk of serious entanglements, included in the 2021 final rule, will not yet be required in Federal waters until May 1, 2022. Given the dense concentration of high-strength vertical lines in an area with persistent right whale presence, this wedge area presents an imminent entanglement threat.

In summary, this emergency action is necessary to prevent risk to right whales in an area of elevated risk in Massachusetts Bay in April 2022. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for this time sensitive management problem. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior notice and public comment on these emergency measures.

References

NMFS. 2019. Guidance on the Application of NEPA for Emergency Response Actions. Memo to National Environmental Policy Act (NEPA) Practitioners. September 23, 2019.

NMFS. 2021a. Draft U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2021 *https://media.fisheries.noaa.gov/2021-10/Draft%202021%20NE%26SE%20SARs.pdf.*

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Pace, R.M. 2021. Revisions and Further Evaluations of the Right Whale Abundance Model: Improvements for Hypothesis Testing. NOAA Technical Memorandum NMFS–NE–269. Northeast Fisheries Science Center, Woods Hole, MA.

Pace, R.M., R. Williams, S.D. Kraus, A.R. Knowlton, and H.M. Pettis. 2021. Cryptic mortality of North Atlantic right whales. Conservation Science and Practice 2021:e346.

Pettis, H.M., R.M. Pace, and P.K. Hamilton. 2022. North Atlantic Right Whale Consortium 2021 Annual Report Card. Report to the North Atlantic Right Whale Consortium.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Endangered Species, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: February 23, 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 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.32, add paragraph (c)(3)(iv) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(3) * * *

(iv) *Massachusetts Restricted Area emergency extension.* During the period April 1–30, 2022, the Massachusetts Restricted Area defined in paragraph (c)(3)(i) of this section is extended from the Massachusetts State waters boundary at MRAW1 to MRAW2 (also MRA3 in Table 11 to paragraph (c)(3)(i)), then it is bounded by a rhumb line connecting points MRAW2 to MRAW3 (MRA4), and then bounded by a rhumb line connecting points MRAW3 through MRAW4 (MRA5) back to MRAW1, in the order detailed in Table 11a to this paragraph (c)(3)(iv). From April 1, 2022, through April 30, 2022, it is prohibited to fish with, set, or possess trap/pot gear in the area in this paragraph (c)(3)(iv) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until remotely released for hauling, or buoy lines that are stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this title or other applicable fishery management regulations in this title. The minimum number of trap/trawl gear configuration requirements specified in paragraph (c)(2)(iv) of this section remain in effect unless an exemption to those requirements is authorized.

TABLE 11a TO PARAGRAPH (c)(3)(iv)

Point	Lat	Long
MRAW1	42°39.77′	70°30′
MRAW2 (MRA3)	42°12′	70°38.69′
MRAW3 (MRA4)	42°12′	70°30′
MRAW4 (MRA5)	42°30′	70°30′
MRAW1	42°39.77′	70°30′

* * * * *

[FR Doc. 2022–04291 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02; RTID 0648–XB854]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2021–2022 Closure of Commercial Run-Around Gillnet Fishery for King Mackerel

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL) for king mackerel harvested by run-around gillnet gear in the Gulf southern zone has been reached. Therefore, NMFS implements an accountability measure (AM) and closes the southern zone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ on March 2, 2022. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective from 12 p.m. local time on March 2, 2022, until 6 a.m. local time on January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils. NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for the Gulf migratory group of king mackerel (Gulf king mackerel) apply as either round or gutted weight.

The commercial fishery for Gulf king mackerel is divided into western, northern, and southern zones. The southern zone for Gulf king mackerel encompasses an area of the Gulf EEZ off Collier and Monroe Counties in south Florida, which is the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast (50 CFR 622.369(a)(1)(iii)).

The commercial ACL for Gulf king mackerel is divided into separate ACLs for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. The commercial gillnet quota (equivalent to the commercial gillnet ACL) for Gulf king mackerel is normally 575,400 lb (260,997 kg) and the current fishing year is from July 1, 2021, through June 30, 2022 (50 CFR 622.384(b)(1)(iii)(B)). However, on October 5, 2021, NMFS published a temporary rule in the **Federal Register** to reduce the commercial gillnet ACL for the 2021–2022 fishing year (86 FR 54871, October 5, 2021). NMFS determined that landings in the 2020–2021 fishing year of king mackerel harvested by run-around gillnet gear exceeded the commercial quota of 575,400 lb (260,997 kg) by 11,920 lb (5,407 kg). The AM specified in 50 CFR 622.388(a)(1)(iii) states if commercial landings of king mackerel caught by run-around gillnet gear exceed the ACL, then NMFS will reduce the commercial gillnet ACL in the following fishing year by the amount of the ACL overage. Therefore, NMFS reduced the 2021–2022 commercial gillnet ACL to 563,480 lb (255,590 kg) for the 2021–2022 fishing year.

Further, regulations at 50 CFR 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its applicable quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that for the 2021–2022 fishing year, landings have reached the commercial quota for Gulf king mackerel on vessels using run-around gillnet gear in the southern zone. Accordingly, commercial fishing using such gear in the southern zone is closed at 12 p.m. local time on March 2, 2022. The next fishing season begins at 6 a.m. local time on January 17, 2023, *i.e.,* the day after the 2023 Martin Luther King, Jr. Federal holiday. Vessel operators that have been issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear in the southern zone must have landed ashore and bartered, traded, or sold such king

mackerel prior to 12 p.m. local time on March 2, 2022.

Persons on a vessel using hook-and-line gear in the southern zone for which a Federal commercial permit for Gulf king mackerel has been issued, except persons on such a vessel also issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear, may fish for or retain Gulf king mackerel unless the southern zone commercial quota for hook-and-line gear has been met and the hook-and-line component of the commercial sector has been closed. In addition, as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)), a person on a vessel that has a valid Federal commercial gillnet permit for king mackerel may continue to retain king mackerel under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2).

During the commercial closure, Gulf king mackerel harvested using run-around gillnet gear in the southern zone may not be purchased or sold. This prohibition does not apply to Gulf king mackerel harvested using run-around gillnet gear in the southern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.388(a)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedure is unnecessary because the regulations associated with the commercial quota and associated AM for Gulf king mackerel have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the closure to protect the Gulf king mackerel resource. The capacity of the commercial fishing fleet allows for rapid harvest of the commercial quota, and any delay in the closure could result in the commercial quota being exceeded. Prior notice and opportunity for public comment would require time and would potentially result in a harvest that exceeds the commercial quota.

For the previously stated reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this action.

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

Dated: February 25, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–04394 Filed 2–25–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220223–0055]

RIN 0648–BK73

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pink Shrimp and Midwater Trawl Exemptions to Vessel Monitoring System Requirements for the West Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: This rule revises monitoring provisions that specify exemptions for non-groundfish trawl vessels participating in the Pacific coast pink shrimp fishery and for groundfish midwater trawl vessels. In a final rule on vessel movement, monitoring, and declaration management for the Pacific coast groundfish fishery published on June 11, 2020, vessels in the pink shrimp trawl fishery were incorrectly included with other open access non-groundfish trawl vessels that became subject to a higher position transmission rate on their NMFS type-approved vessel monitoring system (VMS) units. This final rule corrects the error and returns the required transmission rate for vessels in the pink shrimp trawl fishery to once every 60 minutes, as recommended by the Pacific Fishery Management Council (Council). This action also corrects a citation error in the VMS regulations with regards to exemptions for midwater trawl vessels, as well as a typographical error in the trawl fishery prohibitions.

DATES: Effective April 1, 2022.

ADDRESSES: Copies of the analytic document supporting this action, are available via the Federal eRulemaking Portal: *https://www.regulations.gov,* docket NOAA–NMFS–2021–0085, or by contacting the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Matt Dunlap, Fishery Policy Analyst, 206–526–6019, or *matthew.dunlap@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2020, NMFS published a final rule on vessel movement, monitoring, and declaration management that revised reporting and monitoring provisions for vessels participating in the Pacific coast groundfish fishery (85 FR 35594). The rule increased the vessel position frequency to improve NMFS's ability to enforce fishing activity around restricted areas. The rule required an increase in the position transmission rate from once every 60 minutes to once every 15 minutes for groundfish vessels using NMFS type-approved VMS units. This increase in frequency produces more course, location, and speed data to improve NMFS's ability to identify whether vessels are continuously transiting in restricted areas or not. The Council discussed and recommended an exemption to the increased transmission rate for vessels fishing in the pink shrimp trawl fishery because this fishery is not subject to restrictions against trawling in Rockfish Conservation Areas (RCAs) and because the Council and NMFS Office of Law Enforcement did not have concerns with enforcing pink shrimp trawling restrictions in Essential Fish Habitat (EFH) Conservation Areas. However, the exemption for pink shrimp trawl vessels was inadvertently not included in the original proposed or final rule. This final rule adds the exemption to the increased ping rate for pink shrimp trawl vessels, corrects a citation error in the midwater trawl exemption at 50 CFR 660.14(d)(3)(ii)(B), and corrects a typographical error in the prohibitions section of the trawl fishery regulations at 50 CFR 660.112(b)(1)(x).

Between September 2014 and April 2016, the Council developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. Additional details about the Council's considerations are included in the Council's analytical document (see **ADDRESSES**). The Council's public

scoping document includes several references to making an exemption for the increase in ping rate for pink shrimp trawl vessels, specifically in Section 1.5.6.

During the development of the management measures for the Vessel Movement and Monitoring Rule finalized in 2020, the Council noted that the pink shrimp fishery was required to maintain a VMS unit at a ping rate of one per hour. This ping rate is sufficient to allow enforcement of the closed EFH Conservation Areas that vessels in this fishery are subject to. The Council considered that there are no restrictions for the pink shrimp trawl fishery from fishing in RCAs and that a vessel is required to declare the type of gear being used for each trip, which verifies its authorization to fish in the RCA. Therefore, the Council decided that additional monitoring for vessels participating in the pink shrimp trawl fishery is not necessary.

Summary of the Regulatory Changes

This section discusses the regulatory revisions that will carry out the Council's recommendation. The regulatory changes in this final rule are identical to the regulatory changes specified in the proposed rule published on October 26, 2021 (86 FR 59109).

This final rule:

- Restores the position transmission rate requirement of once every 60 minutes for vessels participating in the pink shrimp trawl fishery;
- Corrects a citation in the ping rate exemption for midwater trawl fishing vessels at 50 CFR 660.14(d)(3)(ii)(B); and
- Corrects a typographical error in the prohibitions section of the trawl fishery regulations at 50 CFR 660.112(b)(1)(x).

These revisions relieve vessels participating in the pink shrimp fishery from the added burden of more frequent position transmissions, consistent with the Council's recommendation and clarify a cross-citation from the previous rulemaking on this issue.

Comments and Responses

NMFS received one comment letter during the comment period for the proposed rule. The comment letter came from Oceana, an environmental organization, and can be viewed along with the proposed rule and supporting documents for this action at *www.regulations.gov.* Following are the specific comments in the comment letter, along with the response to each:

Comment 1: Oceana opposed the rule based on the statement in the proposed rule that pink shrimp trawlers do not have restrictions on where they can trawl.

Response: NMFS clarifies that pink shrimp trawlers do have restrictions on where they can trawl, including EFH Conservation Areas, as well as state conservation areas. NMFS does not enforce state regulations within state waters, including trawling within a state conservation area, though NMFS would refer observed violations to the appropriate agency. NMFS does enforce the appropriate federal regulations, including VMS carriage and declaration requirements. However, as the proposed rule stated, pink shrimp trawlers do not have restrictions against trawling in RCAs, the largest of the groundfish closed areas. The Council decision documents establishing the Alternatives for the Vessel Movement and Monitoring Rule from November 14–15, 2015, and the decision document for the Final Action on Regulations for Vessel Movement Monitoring (VMM) from April 9–14, 2016, include an exemption for pink shrimp trawl vessels from the increased VMS ping rate because the Council determined that the higher ping rates were not necessary for enforcing the EFH Conservation Area closures for pink shrimp vessels, and because vessels in this sector are not held to the scale of closed areas that other vessels in Federal fisheries off the West Coast are held to.

Comment 2: Oceana contends that the higher ping rate is necessary to enforce pink shrimp trawling restrictions in EFH Conservation Areas and state conservation areas.

Response: The Council recommended, and NMFS agrees, that the higher ping rate is not necessary to enforce pink shrimp trawl restrictions in EFH Conservation Areas. NMFS found no history of concern with enforcement of trawling by pink shrimp vessels in EFH Conservation Areas or state conservation areas. While NMFS may refer violations observed in state conservation areas to the appropriate agency, the Federal requirements for VMS and declarations are not used to enforce trawling in state conservation areas.

Comment 3: Oceana commented that NMFS should expand its use of enhanced electronic monitoring systems, including gear sensors that can indicate when fishing activity is occurring and Global Positioning Satellites units that can make detailed and accurate records of vessel positions.

Response: NMFS encourages all fishery stakeholders, including the Fishery Management Councils, to consider implementing electronic technology (ET) options where appropriate to meet science, management, and data needs. NMFS released a national Policy on Electronic Technologies and Fishery-dependent Data Collection in 2013 to provide guidance on the implementation of ET solutions and in fisheries. An updated policy was released in May 2019. In 2015, NMFS implemented regional ET implementation plans informed by a series of national-level planning documents. These plans were created to help move beyond pilot projects by identifying, evaluating, and prioritizing implementation of promising ET in specific fisheries around the country. We recently updated these plans, highlighting the lessons learned from the last four years and looking forward to 2024.

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 final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan (FMP), other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS considered the data, views, and comments received during the public comment period.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866. As this rule is correcting an oversight in an earlier rule and would result in no change to the status quo for regulated entities, there are not expected to be any economic or regulatory impacts on these entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 24, 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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.14, revise paragraph (d)(3)(ii)(B) and add paragraph (d)(3)(ii)(D) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations in § 660.13(d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

* * * * *

(D) *Pink shrimp trawl exemption.* If a vessel is fishing for pink shrimp using non-groundfish trawl gear under declarations in § 660.13(d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

* * * * *

■ 3. In § 660.112, revise paragraph (b)(1)(x) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(b) * * *

(1) * * *

(x) Use midwater groundfish trawl gear outside the Pacific whiting IFQ fishery primary season dates as specified at § 660.131(b).

* * * * *

[FR Doc. 2022–04306 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XY118]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2022 and 2023 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces final 2022 and 2023 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the remainder of the 2022 and the start of the 2023 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The 2022 harvest specifications supersede those previously set in the final 2021 and 2022 harvest specifications, and the 2023 harvest specifications will be superseded in early 2023 when the final 2023 and 2024 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Harvest specifications and closures are effective at 1200 hours, Alaska local time (A.l.t.), March 2, 2022, through 2400 hours, A.l.t., December 31, 2023.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), and the annual Supplementary Information Reports (SIRs) to the EIS prepared for this action are available from *https://www.regulations.gov.* The 2021 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2021, and SAFE reports for previous years are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Avenue, Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from the Council's website at *https://www.npfmc.org.*

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (50 CFR 679.20(a)(1)(i)(B)). Section 679.20(c)(1) further requires that NMFS publish and solicit public comment on proposed annual TACs and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final harvest specifications for up to two fishing years as annual TACs and apportionments, Pacific halibut PSC limits, and seasonal allowances of pollock and Pacific cod, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 29 of this rule reflect the outcome of this process, as required at § 679.20(c).

The proposed 2022 and 2023 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 6, 2021 (86 FR 68982). Comments were invited and accepted through January 5, 2022. NMFS did not receive any comments on the proposed harvest specifications. In December 2021, NMFS consulted with the Council regarding the 2022 and 2023 harvest specifications. After considering public comment at public meetings, as well as biological and socioeconomic data that were available at the Council's December 2021 meeting, NMFS is implementing the final 2022 and 2023 harvest specifications, as recommended by the Council. For 2022, the sum of the TAC amounts is 448,118 mt. For 2023, the sum of the TAC amounts is 443,615 mt.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2021, the Council's Scientific and Statistical Committee

(SSC), its Advisory Panel (AP), and the Council reviewed the most recent biological and harvest information about the condition of the GOA groundfish stocks. The Council's GOA Groundfish Plan Team (Plan Team) compiled and presented this information in the 2021 SAFE report for the GOA groundfish fisheries, dated November 2021 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team recommends, and the SSC sets, an overfishing level (OFL) and ABC for each species or species group. The 2021 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the greatest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. At the November 2021 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for groundfish species and species groups that are included in the 2021 SAFE report per the stock assessment schedule found in the 2021 SAFE report introduction. The SSC reviewed this information at the December 2021 Council meeting. Changes from the proposed to the final 2022 and 2023 harvest specifications are discussed below.

The final 2022 and 2023 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass, and the final 2022 and 2023 TACs are based on the best available biological and socioeconomic information. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2022 and 2023 OFLs and ABCs recommended by the Plan Team for most groundfish species, with the exception of Pacific cod and demersal shelf rockfish.

For Pacific cod, the SSC did not accept the Plan Team's recommended model for the 2021 stock assessment. The Plan Team recommended the 2021 stock assessment use a model that incorporated additional complexity over the model used in the 2020 stock assessment. However, the SSC recommended continuing to use the model that was used for the 2020 Pacific cod stock assessment (model 19.1), which resulted in higher Pacific cod 2022 and 2023 ABCs than those that resulted from the Plan Team's recommended model. The SSC concluded that the additional complexity included in the Plan Team's recommended model is premature at this time without further explanation and exploration of the individual changes incorporated into it. Each change should be supported with a sufficient rationale and an assessment of model improvements.

For demersal shelf rockfish, the SSC did not agree with the methodology used in the stock assessment for estimating the biomass for the demersal shelf rockfish complex. The SSC recommended that the assessment incorporate more standard methodology for estimating biomass, which resulted in higher 2022 and 2023 ABCs than recommended by the Plan Team.

The Council adopted the SSC's OFLs and ABCs and the AP's TAC recommendations. The final TAC recommendations are based on the ABCs and are adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended 2022 and 2023 TACs that are equal to ABCs for pollock in the Southeast Outside (SEO) District, sablefish, shallow-water flatfish in the Central GOA and the West Yakutat and SEO Districts, deep-water flatfish, rex sole, arrowtooth flounder in the Central GOA and the West Yakutat District, flathead sole in the West Yakutat and SEO Districts, Pacific ocean perch (a rockfish species), northern rockfish, shortraker rockfish, dusky rockfish, rougheye and blackspotted rockfish, demersal shelf rockfish, thornyhead rockfish, ''other rockfish'' in the Western/Central GOA and West Yakutat District, big skate, longnose skate, other skates, sharks, and octopuses in the GOA. The Council recommended TACs for 2022 and 2023 that are less than the ABCs for pollock for the combined Western and Central GOA and West Yakutat District area, Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder in the Western GOA and the SEO District, flathead sole in the Western and Central GOA, Atka mackerel, and ''other rockfish'' in the SEO District.

The combined Western, Central, and West Yakutat pollock TAC and the GOA Pacific cod TACs are set to accommodate the State of Alaska's (State's) guideline harvest levels (GHLs) so that the ABCs for pollock and Pacific cod are not exceeded. The Western GOA shallow-water flatfish, Western GOA arrowtooth flounder, and Western GOA flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other, more fully utilized fisheries. Similarly, the SEO District arrowtooth flounder TAC and the Central GOA flathead sole TAC are set lower than ABC to conserve halibut PSC limit for use in other fisheries or because there is limited commercial interest and participation in these fisheries. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. The ''other rockfish'' TAC in the SEO District is set to reduce the amount of discards of the species in that complex.

The final 2022 and 2023 harvest specifications approved by the Secretary of Commerce are unchanged from those recommended by the Council, and are consistent with the preferred harvest strategy alternative outlined in the FMP and EIS (see **ADDRESSES**).

NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2021 SAFE report. NMFS also finds that the Council's recommendations for TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the OY range. NMFS reviewed the Council's recommended TACs and apportionments, and NMFS approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2022 and 2023 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The 2022 harvest specifications set in this final action supersede the

2022 harvest specifications previously set in the final 2021 and 2022 harvest specifications (86 FR 10184, February 19, 2021). The 2023 harvest specifications will be superseded in early 2023 when the final 2023 and 2024 harvest specifications are published. Pursuant to this final action, the 2022 harvest specifications therefore will apply for the remainder of the current year (2022), while the 2023 harvest specifications are projected only for the following year (2023) and will be superseded in early 2023 by the final 2023 and 2024 harvest specifications. Because this final action (published in early 2022) will be superseded in early 2023 by the publication of the final 2023 and 2024 harvest specifications, it is projected that this final action will implement the harvest specifications for the Gulf of Alaska for approximately one year.

Specification and Apportionment of TAC Amounts

NMFS's apportionment of groundfish species is based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations govern the apportionment of pollock, Pacific cod, and sablefish and are described below.

The ABC for the pollock stock in the combined Western and Central Regulatory Areas and the West Yakutat (WYK) District of the Eastern Regulatory Area (the W/C/WYK) includes the amount for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council have recommended that the sum of all State water and Federal water pollock removals from the GOA not exceed ABC recommendations. For 2022 and 2023, the SSC recommended and the Council approved the W/C/WYK pollock ABC, including the amount to account for the State's PWS GHL. At the November 2021 Plan Team meeting, State fisheries managers recommended setting the PWS pollock GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2022, this yields a PWS pollock GHL of 3,327 mt, an increase of 684 mt from the 2021 PWS pollock GHL of 2,643 mt. For 2023, the PWS pollock GHL is 3,298 mt, an increase of 655 mt from the 2021 PWS pollock GHL of 2,643 mt. After the GHL reductions, the 2022 and 2023 pollock ABCs for the combined W/C/WYK areas are then apportioned between four statistical areas (Areas 610, 620, 630, and 640) as both ABCs and TACs, as described below and detailed in Tables 1 and 2. The total ABCs and TACs for the four statistical areas, plus the State PWS GHL, do not exceed the combined W/C/WYK ABC.

Apportionments of pollock to the W/C/WYK areas are considered to be ''apportionments of annual catch limits (ACLs)'' rather than ''ABCs.'' This more accurately reflects that such apportionments address management, rather than biological or conservation, concerns. In addition, apportionments of the ACL in this manner allow NMFS to balance any transfer of TAC among Areas 610, 620, and 630 pursuant to § 679.20(a)(5)(iv)(B) to ensure that the combined W/C/WYK ACL, ABC, and TAC are not exceeded.

NMFS establishes pollock TACs in the Western (Area 610) and Central (Areas 620 and 630) Regulatory Areas and the West Yakutat (Area 640) and the SEO (Area 650) Districts of the GOA (see Tables 1 and 2). NMFS also establishes seasonal apportionments of the annual pollock TACs in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. Additional detail on area apportionments and seasonal allowances is provided in a subsequent section in this rule, titled ''Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components;'' Tables 3 and 4 list these amounts.

The 2022 and 2023 Pacific cod TACs are set to accommodate the State's GHLs for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State water and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. The Council set the 2022 and 2023 Pacific cod TACs in the Western, Central, and Eastern Regulatory Areas to account for State GHLs. Therefore, the 2022 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,983 mt; (2) Central GOA, 4,938 mt; and (3) Eastern GOA, 779 mt. The 2023 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,610 mt; (2) Central GOA, 4,321 mt; and (3) Eastern GOA, 682 mt. These amounts reflect the State's 2022 and 2023 GHLs in these areas, which are 30 percent of the Western GOA ABC and 25 percent of the Eastern and Central GOA ABCs.

The Western and Central GOA Pacific cod TACs are allocated among various gear and operational sectors. NMFS also establishes seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. The Pacific cod sector and seasonal apportionments are discussed in detail in a subsequent section, titled ''Annual and Seasonal Apportionments of Pacific Cod TAC,'' and in Tables 5 and 6 of this rule.

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area (§ 679.7(b)(1)) and makes available 5 percent of the combined Eastern Regulatory Area TACs to vessels using trawl gear for use as incidental catch in other trawl groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2022 and 2023 allocations of sablefish TAC to fixed gear and trawl gear in the GOA.

Changes From the Proposed 2022 and 2023 Harvest Specifications in the GOA

In October 2021, the Council's recommendations for the proposed 2022 and 2023 harvest specifications (86 FR 68982, December 6, 2021) were based largely on information contained in the final 2020 SAFE report for the GOA groundfish fisheries, dated November 2020. The final 2020 SAFE report for the GOA is available from the Council (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2022 groundfish fisheries (86 FR 10184, February 19, 2021) be used for the proposed 2022 and 2023 harvest specifications (86 FR 68982, December 6, 2021), pending completion and review of the 2021 SAFE report at the Council's December 2021 meeting.

As described previously, the SSC recommended the final 2022 and 2023 OFLs and ABCs as recommended by the Plan Team, with the exception of the Pacific cod and demersal shelf rockfish OFLs and ABCs. The Council adopted as its recommendations the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2022 and 2023.

The final 2022 ABCs are higher than the proposed 2022 ABCs published in the proposed 2022 and 2023 harvest specifications (86 FR 68982, December 6, 2021) for pollock, rex sole, flathead sole, Pacific ocean perch, northern rockfish, dusky rockfish, demersal shelf rockfish, longnose skate, and other skates. The final 2022 ABCs are lower than the proposed 2022 ABCs for Pacific cod, sablefish, shallow-water flatfish, deep-water flatfish, arrowtooth flounder, shortraker rockfish, rougheye and blackspotted rockfish, and big skate.

The final 2023 ABCs are higher than the proposed 2023 ABCs for pollock, rex sole, flathead sole, Pacific ocean perch, demersal shelf rockfish, longnose skate, and other skates. The final 2023 ABCs

are lower than the proposed 2023 ABCs for Pacific cod, sablefish, shallow-water flatfish, deep-water flatfish, arrowtooth flounder, northern rockfish, shortraker rockfish, dusky rockfish, rougheye and blackspotted rockfish, and big skate. For the remaining target species (thornyhead rockfish, other rockfish, Atka mackerel, sharks, and octopuses), the Council recommended the final 2022 and 2023 ABCs that are the same as the proposed 2022 and 2023 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2021 SAFE report, which was not completed and available when the Council made its proposed ABC and TAC recommendations in October 2021. At that time, the most recent stock assessment information was contained in the final 2020 SAFE report. The final 2021 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the 2021 SAFE report in December 2021 when it made recommendations for the final 2022 and 2023 harvest specifications. In the GOA, the total final 2022 TAC amount is 448,118 mt, an increase of 9.6 percent from the total proposed 2022 TAC amount of 409,039 mt. The total final 2023 TAC amount is 443,615 mt, an increase of 8.5 percent from the total proposed 2023 TAC amount of 409,039 mt. Table 1a summarizes the difference between the proposed and final TACs.

Annual stock assessments incorporate a variety of new or revised inputs, such as survey data or catch information, as well as changes to the statistical models used to estimate a species' biomass and population trend. Changes to biomass and ABC estimates are primarily based on fishery catch updates to species' assessment models. Some species, such as pollock and sablefish, have additional surveys conducted on an annual basis, which resulted in additional data being available for the 2021 assessments for these stocks.

The changes for individual species or species groups from the proposed 2022 TACs to the final 2022 TACs are within a range of plus 42 percent or minus 35 percent, and the changes from the proposed 2023 TACs to the final 2023 TACs are within a range of plus 42 percent or minus 36 percent. Based on changes in the estimates of overall biomass in the stock assessment for 2022 and 2023, as compared to the estimates previously made for 2021 and 2022, the species or species group with the greatest TAC percentage increases are pollock, rex sole, Pacific ocean perch, demersal shelf rockfish, and other skates. Based on changes in the estimates of biomass, the species or species group with the greatest TAC percentage decreases are Pacific cod, sablefish, rougheye and blackspotted rockfish, and big skate. For all other species and species groups, changes from the proposed 2022 TACs to the final 2022 TACs and changes from the proposed 2023 TACs to the final 2023 TACs are less than a 10 percent change (either increase or decrease). These TAC changes correspond to associated changes in the ABCs and TACs, as recommended by the SSC, AP, and Council.

Detailed information providing the basis for the changes described above is contained in the final 2021 SAFE report. The final TACs are based on the best scientific information available, including biological and socioeconomic information. These TACs are specified in compliance with the harvest strategy described in the proposed and final rules for the 2022 and 2023 harvest specifications.

TABLE 1A—COMPARISON OF PROPOSED AND FINAL 2022 AND 2023 GOA TOTAL ALLOWABLE CATCH LIMITS

[Values are rounded to the nearest metric ton and percentage]

Species	2022 and 2023 proposed TAC	2022 final TAC	2022 final minus 2022 proposed TAC	Percentage difference	2023 final TAC	2023 final minus 2023 proposed TAC	Percentage difference
Pollock	99,784	141,117	41,333	41	139,977	40,193	40
Pacific cod	27,961	24,111	−3,850	−14	21,096	−6,865	−25
Sablefish	25,231	22,794	−2,437	−10	22,003	−3,228	−13
Shallow-water flatfish	45,673	42,604	−3,069	−7	44,272	−1,401	−3
Deep-water flatfish	5,926	5,908	−18	0	5,818	−108	−2
Rex sole	15,416	19,141	3,725	24	20,594	5,178	34
Arrowtooth flounder	95,454	96,501	1,047	1	95,512	58	0
Flathead sole	28,445	27,437	−1,008	−4	27,426	−1,019	−4
Pacific ocean perch	34,602	38,268	3,666	11	37,104	2,502	7
Northern rockfish	5,099	5,146	47	1	4,920	−179	−4
Shortraker rockfish	708	705	−3	0	705	−3	0
Dusky rockfish	5,295	5,372	77	1	5,181	−114	−2
Rougheye/blackspotted rockfish	1,221	788	−433	−35	781	−440	−36
Demersal shelf rockfish	257	365	108	42	365	108	42
Thornyhead rockfish	1,953	1,953	0	0	1,953	0	0
Other rockfish	1,609	1,610	1	0	1,610	1	0
Atka mackerel	3,000	3,000	0	0	3,000	0	0
Big skate	3,208	2,867	−341	−11	2,867	−341	−11
Longnose skate	2,587	2,712	125	5	2,712	125	5
Other skates	875	984	109	12	984	109	12
Sharks	3,755	3,755	0	0	3,755	0	0
Octopuses	980	980	0	0	980	0	0
Total	409,039	448,118	39,079	9.6	443,615	34,576	8.5

The final 2022 and 2023 TAC amounts for the GOA are within the OY range established for the GOA and do not exceed the ABC for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC amounts for GOA groundfish for 2022 and 2023, respectively.

TABLE 1—FINAL 2022 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Pollock [2]	Shumagin (610)	n/a	23,714	23,714
	Chirikof (620)	n/a	69,250	69,250
	Kodiak (630)	n/a	30,068	30,068
	WYK (640)	n/a	6,722	6,722
	W/C/WYK (subtotal) [2]	154,983	133,081	129,754
	SEO (650)	15,150	11,363	11,363
	Total	170,133	144,444	141,117
Pacific cod [3]	W	n/a	9,942	6,959
	C	n/a	19,752	14,814
	E	n/a	3,117	2,338
	Total	39,555	32,811	24,111
Sablefish [4]	W	n/a	3,727	3,727
	C	n/a	9,965	9,965
	WYK	n/a	3,437	3,437
	SEO	n/a	5,665	5,665
	Subtotal TAC	n/a	n/a	22,794
	Total	40,432	34,521	n/a
Shallow-water flatfish [5]	W	n/a	21,256	13,250
	C	n/a	25,305	25,305
	WYK	n/a	2,531	2,531
	SEO	n/a	1,518	1,518
	Total	62,273	50,610	42,604
Deep-water flatfish [6]	W	n/a	256	256
	C	n/a	2,139	2,139
	WYK	n/a	1,431	1,431
	SEO	n/a	2,082	2,082
	Total	7,026	5,908	5,908
Rex sole	W	n/a	2,981	2,981
	C	n/a	12,076	12,076
	WYK	n/a	1,361	1,361
	SEO	n/a	2,723	2,723
	Total	23,302	19,141	19,141
Arrowtooth flounder	W	n/a	33,658	14,500
	C	n/a	68,394	68,394
	WYK	n/a	6,707	6,707
	SEO	n/a	11,020	6,900
	Total	143,100	119,779	96,501
Flathead sole	W	n/a	14,755	8,650
	C	n/a	22,033	15,400
	WYK	n/a	1,511	1,511
	SEO	n/a	1,876	1,876
	Total	48,928	40,175	27,437
Pacific ocean perch [7]	W	n/a	2,602	2,602
	C	n/a	30,806	30,806
	WYK	n/a	1,409	1,409
	W/C/WYK subtotal	41,470	34,817	34,817
	SEO	4,110	3,451	3,451
	Total	45,580	38,268	38,268
Northern rockfish [8]	W	n/a	1,944	1,944

TABLE 1—FINAL 2022 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
	C	n/a	3,202	3,202
	E	n/a		
	Total	6,143	5,146	5,146
Shortraker rockfish [9]	W	n/a	51	51
	C	n/a	280	280
	E	n/a	374	374
	Total	940	705	705
Dusky rockfish [10]	W	n/a	269	269
	C	n/a	4,534	4,534
	WYK	n/a	427	427
	SEO	n/a	142	142
	Total	8,614	5,372	5,372
Rougheye and Blackspotted rockfish [11]	W	n/a	184	184
	C	n/a	235	235
	E	n/a	369	369
	Total	947	788	788
Demersal shelf rockfish [12]	SEO	579	365	365
Thornyhead rockfish [13]	W	n/a	352	352
	C	n/a	910	910
	E	n/a	691	691
	Total	2,604	1,953	1,953
Other rockfish [14 15]	W and C	n/a	940	940
	WYK	n/a	370	370
	SEO	n/a	2,744	300
	Total	5,320	4,054	1,610
Atka mackerel	GW	6,200	4,700	3,000
Big skate [16]	W	n/a	591	591
	C	n/a	1,482	1,482
	E	n/a	794	794
	Total	3,822	2,867	2,867
Longnose skate [17]	W	n/a	151	151
	C	n/a	2,044	2,044
	E	n/a	517	517
	Total	3,616	2,712	2,712
Other skates [18]	GW	1,311	984	984
Sharks	GW	5,006	3,755	3,755
Octopus	GW	1,307	980	980
Total		626,738	520,038	448,118

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] The total for the W/C/WYK Regulatory Areas pollock ABC is 133,081 mt. After deducting 2.5 percent (3,327 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 129,754 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 3 (final 2022 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 5 lists the final 2022 Pacific cod seasonal apportionments and sector allocations.

[4] The sablefish OFL and ABC are set Alaska-wide (40,432 mt and 34,521 mt, respectively). Additionally, sablefish is allocated to trawl and fixed gear in 2022 and trawl gear in 2023. Table 7 lists the final 2022 allocations of sablefish TACs.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.
[7] "Pacific ocean perch" means *Sebastes alutus.*
[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the "other rockfish" species group.
[9] "Shortraker rockfish" means *Sebastes borealis.*
[10] "Dusky rockfish" means *Sebastes variabilis.*
[11] "Rougheye and blackspotted rockfish" mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).
[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[13] "Thornyhead rockfish" means *Sebastolobus* species.
[14] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis.*
[15] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.
[16] "Big skate" means *Raja binoculata.*
[17] "Longnose skate" means *Raja rhina.*
[18] "Other skates" mean *Bathyraja and Raja* spp.

TABLE 2—FINAL 2023 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Pollock [2]	Shumagin (610)	n/a	23,506	23,506
	Chirikof (620)	n/a	68,642	68,642
	Kodiak (630)	n/a	29,803	29,803
	WYK (640)	n/a	6,663	6,663
	W/C/WYK (subtotal) [2]	153,097	131,912	128,614
	SEO (650)	15,150	11,363	11,363
	Total	168,247	143,275	139,977
Pacific cod [3]	W	n/a	8,699	6,089
	C	n/a	17,282	12,962
	E	n/a	2,727	2,045
	Total	34,673	28,708	21,096
Sablefish [4]	W	n/a	3,951	3,951
	C	n/a	9,495	9,495
	WYK	n/a	3,159	3,159
	SEO	n/a	5,398	5,398
	Subtotal TAC	n/a	n/a	22,003
	Total	42,520	36,318	n/a
Shallow-water flatfish [5]	W	n/a	22,464	13,250
	C	n/a	26,743	26,743
	WYK	n/a	2,674	2,674
	SEO	n/a	1,605	1,605
	Total	65,676	53,486	44,272
Deep-water flatfish [6]	W	n/a	256	256
	C	n/a	2,105	2,105
	WYK	n/a	1,408	1,408
	SEO	n/a	2,049	2,049
	Total	6,920	5,818	5,818
Rex sole	W	n/a	3,222	3,222
	C	n/a	13,054	13,054
	WYK	n/a	1,439	1,439
	SEO	n/a	2,879	2,879
	Total	25,049	20,594	20,594
Arrowtooth flounder	W	n/a	33,214	14,500
	C	n/a	67,493	67,493
	WYK	n/a	6,619	6,619

TABLE 2—FINAL 2023 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
	SEO	n/a	10,875	6,900
	Total	141,231	118,201	95,512
Flathead sole	W	n/a	14,708	8,650
	C	n/a	21,962	15,400
	WYK	n/a	1,506	1,506
	SEO	n/a	1,870	1,870
	Total	48,757	40,046	27,426
Pacific ocean perch [7]	W	n/a	2,523	2,523
	C	n/a	29,869	29,869
	WYK	n/a	1,366	1,366
	W/C/WYK	40,211	33,758	33,758
	SEO	3,985	3,346	3,346
	Total	44,196	37,104	37,104
Northern rockfish [8]	W	n/a	1,859	1,859
	C	n/a	3,061	3,061
	E	n/a	.....	.....
	Total	5,874	4,920	4,920
Shortraker rockfish [9]	W	n/a	51	51
	C	n/a	280	280
	E	n/a	374	374
	Total	940	705	705
Dusky rockfish [10]	W	n/a	259	259
	C	n/a	4,373	4,373
	WYK	n/a	412	412
	SEO	n/a	137	137
	Total	8,146	5,181	5,181
Rougheye and Blackspotted rockfish [11]	W	n/a	182	182
	C	n/a	234	234
	E	n/a	365	365
	Total	937	781	781
Demersal shelf rockfish [12]	SEO	579	365	365
Thornyhead rockfish [13]	W	n/a	352	352
	C	n/a	910	910
	E	n/a	691	691
	Total	2,604	1,953	1,953
Other rockfish [14 15]	W and C	n/a	940	940
	WYK	n/a	370	370
	SEO	n/a	2,744	300
	Total	5,320	4,054	1,610
Atka mackerel	GW	6,200	4,700	3,000
Big skate [16]	W	n/a	591	591
	C	n/a	1,482	1,482
	E	n/a	794	794
	Total	3,822	2,867	2,867
Longnose skate [17]	W	n/a	151	151
	C	n/a	2,044	2,044
	E	n/a	517	517

TABLE 2—FINAL 2023 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
	Total	3,616	2,712	2,712
Other skates [18]	GW	1,311	984	984
Sharks	GW	5,006	3,755	3,755
Octopus	GW	1,307	980	980
Total		622,931	517,507	443,615

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] The total for the W/C/WYK Regulatory Areas pollock ABC is 131,912 mt. After deducting 2.5 percent (3,298 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 128,614 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 4 (final 2023 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 6 lists the final 2023 Pacific cod seasonal apportionments and sector allocations.

[4] The sablefish OFL and ABC are set Alaska-wide (42,520 mt and 36,318 mt, respectively). Additionally, sablefish is allocated only to trawl gear for 2023. Table 8 lists the final 2023 allocation of sablefish TACs to trawl gear.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the "other rockfish" species group.

[9] "Shortraker rockfish" means *Sebastes borealis.*

[10] "Dusky rockfish" means *Sebastes variabilis.*

[11] "Rougheye and blackspotted rockfish" mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).

[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] "Thornyhead rockfish" means *Sebastolobus* species.

[14] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis.*

[15] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

[16] "Big skate" means *Raja binoculata.*

[17] "Longnose skate" means *Raja rhina.*

[18] "Other skates" mean *Bathyraja and Raja* spp.

Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sharks, and octopuses in reserve for possible apportionment at a later date during the fishing year. For 2022 and 2023, NMFS proposed reapportionment of all the reserves in the proposed 2022 and 2023 harvest specifications published in the **Federal Register** on December 6, 2021 (86 FR 68982). NMFS did not receive any public comments on the proposed reapportionments. For the final 2022 and 2023 harvest specifications, NMFS reapportions, as proposed, all the reserves for pollock, Pacific cod, flatfish, sharks, and octopuses back to the original TAC limit from which the reserve was derived (§ 679.20(b)(3)). This is being done because NMFS expects, based on recent harvest patterns, that such reserves are not necessary or that the entire TAC for each of these species will be caught. The TACs listed in Tables 1 and 2 reflect reapportionments of reserve amounts to the original TAC limit for these species and species groups, *i.e.,* each final TAC for the above mentioned species or species groups contains the full TAC recommended by the Council.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. The pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630. These apportionments are divided into two equal seasonal allowances of 50 percent to the A season (January 20 through May 31) and 50 percent to the B season (September 1 through November 1) (§§ 679.20(a)(5)(iv)(B) and 679.23(d)(2)).

Regulatory changes that were effective in 2021 revised the number of GOA pollock seasons to two seasons from four seasons (85 FR 38093, June 25, 2020). The GOA pollock stock assessment continues to use a four-season methodology to determine pollock distribution in the Western and Central Regulatory Areas of the GOA to maintain continuity in the historical pollock apportionment time-series. Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass determined by the most recent NMFS

surveys, pursuant to § 679.20(a)(5)(iv)(A). The pollock chapter of the 2021 SAFE report (see **ADDRESSES**) contains a comprehensive description of the apportionment and reasons for the minor changes from past apportionments. For purposes of specifying pollock TAC between two seasons for the Western and Central Regulatory Areas of the GOA, NMFS has summed the A and B season apportionments and the C and D season apportionments as calculated in the 2021 GOA pollock assessment. This yields the seasonal amounts specified for the A season and the B season, respectively.

Within any fishing year, the amount by which a pollock seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances for the Western and Central Regulatory Areas in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the subsequent seasonal TAC apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas and in an amount no more than 20 percent of the seasonal TAC apportionment in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and the SEO Districts of 6,722 mt and 11,363 mt, respectively, in 2022, and 6,663 mt and 11,363 mt, respectively, in 2023, are not allocated by season.

Tables 3 and 4 list the final 2022 and 2023 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown. Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all GOA regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of pollock amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

TABLE 3—FINAL 2022 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton [1]]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
A (January 20–May 31)	1,132	52,304	8,080	61,516
B (September 1–November 1)	22,582	16,946	21,988	61,516
Annual Total	23,714	69,250	30,068	123,032

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.
[2] As established by § 679.23(d)(2), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2023 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton [1]]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
A (January 20–May 31)	1,122	51,845	8,009	60,976
B (September 1–November 1)	22,384	16,797	21,795	60,976
Annual Total	23,506	68,642	29,803	121,952

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.
[2] As established by § 679.23(d)(2), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

Pursuant to § 679.20(a)(12)(i), NMFS seasonally allocates the 2022 and 2023 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. In the Western and Central Regulatory Areas, a portion of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10, and a portion of the annual TAC is apportioned to the B season for jig gear from June 10 through December 31, for hook-and-line and pot gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.20(a)(12) and 679.23(d)(3)). NMFS also allocates the Pacific cod TACs annually between the inshore (90 percent) and offshore (10 percent) components in the Eastern Regulatory Area of the GOA (§ 679.20(a)(6)(ii)).

In the Central GOA, the Pacific cod TAC is apportioned seasonally first to

vessels using jig gear, and then among catcher vessels (CVs) less than 50 feet in length overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, catcher/processors (CPs) using hook-and-line gear, CVs using trawl gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(B)). In the Western GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among CVs using hook-and-line gear, CPs using hook-and-line gear, CVs using trawl gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(A)). Excluding seasonal apportionments to the jig sector, NMFS seasonally apportions the remainder of the annual Pacific cod TACs in the Western GOA as 63.84 percent to the A season and 36.16 percent to the B season, and in the Central GOA as 64.16 percent to the A season and 35.84 percent to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod season allowance from the A season may be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that is determined by NMFS as likely to go unharvested by a sector may be reallocated to other sectors for harvest during the remainder of the fishery year.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod TACs in the Western and Central GOA will be allocated to vessels with a Federal fisheries permit that use jig gear before the TACs are apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (see Table 1 of the rulemaking to implement Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation increases are established for a minimum of two years.

NMFS has evaluated the historical harvest performance of the jig sector in the Western and Central GOA, and is establishing the 2022 and 2023 Pacific cod apportionments to this sector based on its historical harvest performance through 2021. NMFS did not evaluate the 2020 performance of the jig sectors in the Western and Central GOA; since NMFS prohibited directed fishing for all Pacific cod sectors in 2020, the catch for the jig sectors could not reach 90 percent of the annual allocation that is required for a performance increase in the following year's allocation (86 FR 68982, December 6, 2021; 84 FR 70438, December 23, 2019). For 2022 and 2023, NMFS allocates the jig sector 3.5 percent of the annual Pacific cod TAC in the Western GOA. The 2022 and 2023 allocations consist of a base allocation of 1.5 percent of the Western GOA Pacific cod TAC, and prior additional performance increases of 2.0 percent. For 2022 and 2023, NMFS allocates the jig sector 1.0 percent of the annual Pacific cod TAC in the Central GOA. The 2022 and 2023 allocations consist of a base allocation of 1.0 percent of the Central GOA Pacific cod TAC, and no additional performance increase in the Central GOA.

For 2022 and 2023, NMFS is apportioning the jig sector allocations for the Western and Central GOA between the A season (60 percent) and the B season (40 percent), pursuant to § 679.20(a)(12)(i). This is the same jig sector seasonal apportionments implemented in prior groundfish harvest specifications for the GOA and is consistent with Amendment 83 to the FMP (76 FR 44700, July 26, 2011).

Tables 5 And 6 list the seasonal apportionments and allocation of the 2022 and 2023 Pacific Catch TACs.

TABLE 5—FINAL 2022 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	244	N/A	146	N/A	97
Hook-and-line CV	94	0.70	47	0.70	47
Hook-and-line CP	1,330	10.90	732	8.90	598
Trawl CV	2,579	31.54	2,118	6.86	461
Trawl CP	161	0.90	60	1.50	101
All Pot CV and Pot CP	2,552	19.80	1,330	18.20	1,222
Total	6,959	63.84	4,433	36.16	2,526
Central GOA:					
Jig (1.0% of TAC)	148	N/A	89	N/A	59
Hook-and-line < 50 CV	2,142	9.32	1,366	5.29	775
Hook-and-line ≥ 50 CV	984	5.61	823	1.10	161
Hook-and-line CP	749	4.11	602	1.00	146
Trawl CV [1]	6,099	25.29	3,710	16.29	2,389
Trawl CP	616	2.00	294	2.19	322
All Pot CV and Pot CP	4,078	17.83	2,615	9.97	1,463
Total	14,814	64.16	9,498	35.84	5,316
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	

TABLE 5—FINAL 2022 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS—Continued

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
	2,338		2,104		234

[1] Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 564 mt, of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 12. Final 2022 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

TABLE 6—FINAL 2023 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	213	N/A	128	N/A	85
Hook-and-line CV	82	0.70	41	0.70	41
Hook-and-line CP	1,163	10.90	641	8.90	523
Trawl CV	2,256	31.54	1,853	6.86	403
Trawl CP	141	0.90	53	1.50	88
All Pot CV and Pot CP	2,233	19.80	1,163	18.20	1,069
Total	6,089	63.84	3,879	36.16	2,210
Central GOA:					
Jig (1.0% of TAC)	130	N/A	78	N/A	52
Hook-and-line < 50 CV	1,874	9.32	1,195	5.29	678
Hook-and-line ≥ 50 CV	861	5.61	720	1.10	141
Hook-and-line CP	655	4.11	527	1.00	128
Trawl CV [1]	5,336	25.29	3,246	16.29	2,090
Trawl CP	539	2.00	257	2.19	282
All Pot CV and Pot CP	3,568	17.83	2,288	9.97	1,280
Total	12,962	64.16	8,311	35.84	4,651
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,045		1,841		205

[1] Trawl catcher vessels participating in Rockfish Program cooperation receive 3.81 percet, or 494 mt, of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 13. Final 2023 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

Allocations of the Sablefish TAC Amounts to Vessels Using Fixed and Trawl Gear

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to fixed and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to fixed gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to fixed gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish using trawl gear while directed fishing for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS approves specifying for incidental catch the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District of the Eastern Regulatory Area. The remainder of the WYK District sablefish TAC is allocated to vessels using fixed gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using fixed gear. This action results in 2022 allocations of 455 mt to trawl gear and 2,982 mt to fixed gear in the WYK District, a 2022 allocation of 5,665 mt to fixed gear in the SEO District, and a 2023 allocation of 428 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2022 sablefish TACs to fixed and trawl gear.

Table 8 lists the allocations of the 2023 sablefish TACs to trawl gear.

The Council recommended that a trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Both the 2022 and 2023 trawl allocations are specified in these final harvest specifications, in Tables 7 and 8, respectively.

The Council also recommended that the fixed gear sablefish TAC be established annually to ensure that this Individual Fishing Quota (IFQ) fishery is conducted concurrently with the halibut IFQ fishery and is based on the most recent survey information. Since there is an annual assessment for sablefish and since the final harvest specifications are expected to be published before the IFQ season begins in March 2022, the Council recommended that the fixed gear sablefish TAC be set annually, rather than for two years, so that the best scientific information available could be considered in establishing the sablefish TACs. Accordingly, Table 7 lists the 2022 fixed gear allocations, and the 2023 fixed gear allocations will be specified in the 2023 and 2024 harvest specifications.

With the exception of the trawl allocations that are provided to the Rockfish Program (see Table 28c to 50 CFR part 679), directed fishing for sablefish with trawl gear in the GOA is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20 (§ 679.23(c)). Therefore, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of these final 2022 and 2023 harvest specifications.

TABLE 7—FINAL 2022 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	3,727	2,982	745
Central [1]	9,965	7,972	1,993
West Yakutat [2]	3,437	2,982	455
Southeast Outside	5,665	5,665	0
Total	22,794	19,601	3,194

[1] The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (1,025 mt). See Table 12: Final 2022 Apportionments of Rockfish Secondary Species in the Central GOA. This results in 968 mt being available for the non-Rockfish Program trawl fisheries.

[2] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2023 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	3,951	n/a	790
Central [2]	9,495	n/a	1,899
West Yakutat [3]	3,159	n/a	428
Southeast Outside	5,398	n/a	0
Total	22,003	n/a	3,117

[1] The Council recommended that the final 2023 harvest specifications for the fixed gear sablefish Individual Fishing Quota fisheries not be specified in the final 2022 and 2023 harvest specifications.

[2] The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (977 mt). See Table 13: Final 2023 Apportionments of Rockfish Secondary Species in the Central GOA. This results in 922 mt being available for the non-Rockfish Program trawl fisheries.

[3] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

Allocations, Apportionments, and Sideboard Limits for the Rockfish Program

These final 2022 and 2023 harvest specifications for the GOA include the fishery cooperative allocations and sideboard limitations established by the Rockfish Program. Rockfish Program participants are primarily trawl CVs and trawl CPs, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to participants for primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) and secondary species (Pacific cod, rougheye and blackspotted rockfish, sablefish, shortraker rockfish, and thornyhead rockfish), allows a participant holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of CP LLP licenses to opt out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Longline gear includes hook-and-line, jig, troll, and handline gear.

Under the Rockfish Program, rockfish primary species in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries (§ 679.81(a)(2)). Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species. In addition to groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit (191 mt) from the

third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d) and Table 28d to 50 CFR part 679). The Rockfish Program also establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. These restrictions and halibut PSC limits are discussed in a subsequent section in this rule titled ''Rockfish Program Groundfish Sideboard and Halibut PSC Limitations.''

Section 679.81(a)(2)(ii) and Table 28e to 50 CFR part 679 require allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 50 mt of dusky rockfish to the entry level longline fishery in 2022 and 2023. The allocations for the entry level longline fishery may increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it reaches the maximum percent of the TAC for that species. In 2021, the catch of Pacific ocean perch, northern rockfish, and dusky rockfish did not attain the 90 percent threshold, and those final allocations for 2022 remain the same as the 2021 allocations. The remainder of the TACs for the rockfish primary species are allocated to the CV and CP cooperatives (§ 679.81(a)(2)(iii)). Table 9 lists the allocations of the 2022 and 2023 TACs for each rockfish primary species to the entry level longline fishery, the potential incremental increases for future years, and the maximum percent of the TACs assigned to the Rockfish Program that may be allocated to the rockfish entry level longline fishery.

TABLE 9—FINAL 2022 AND INITIAL 2023 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2022 and 2023 allocations	Incremental increase in 2023 if > 90% of 2022 allocation is harvested	Up to maximum percent of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1
Northern rockfish	5 metric tons	5 metric tons	2
Dusky rockfish	50 metric tons	20 metric tons	5

Section 679.81 requires allocations of rockfish primary species among various sectors of the Rockfish Program. Tables 10 and 11 list the final 2022 and 2023 allocations of rockfish primary species in the Central GOA to the entry level longline fishery, and rockfish CV and CP cooperatives in the Rockfish Program. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 2,500 mt of Pacific ocean perch, 300 mt of northern rockfish, and 250 mt of dusky rockfish. These amounts are based on recent average incidental catches of these species in the Central GOA by other groundfish fisheries.

Allocations among vessels belonging to CV or CP cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and CP cooperatives are not due to NMFS until March 1 of each calendar year; therefore, NMFS cannot calculate 2022 and 2023 allocations in conjunction with these final harvest specifications (§ 679.81(f)). After receiving the Rockfish Program applications, NMFS will calculate the 2022 allocations for CV and CP cooperatives, as set forth in § 679.81(b), (c), and (e); NMFS will post the 2022 allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports#central-goa-rockfish* when they become available after March 1.

TABLE 10—FINAL 2022 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to the rockfish cooperatives [2]
Pacific ocean perch	30,806	2,500	28,306	5	28,301
Northern rockfish	3,202	300	2,902	5	2,897
Dusky rockfish	4,534	250	4,284	50	4,234
Total	38,542	3,050	35,492	60	35,432

[1] Longline gear includes hook-and-line, jig, troll, and handline gear (50 CFR 679.2).
[2] Rockfish cooperatives include vessels in CV and CP cooperatives (50 CFR 679.81).

TABLE 11—FINAL 2023 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to the rockfish cooperatives [2]
Pacific ocean perch	29,869	2,500	27,369	5	27,364
Northern rockfish	3,061	300	2,761	5	2,756

TABLE 11—FINAL 2023 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM—Continued

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to the rockfish cooperatives [2]
Dusky rockfish	4,373	250	4,123	50	4,073
Total	37,303	3,050	34,253	60	34,193

[1] Longline gear includes hook-and-line, jig, troll, and handline gear (50 CFR 679.2).
[2] Rockfish cooperatives include vessels in CV and CP cooperatives (50 CFR 679.81).

Section 679.81(c) and Table 28c to 50 CFR part 679 require allocations of rockfish secondary species to CV and CP cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear allocation, and thornyhead rockfish. CP cooperatives receive allocations of sablefish from the trawl gear allocation, rougheye and blackspotted rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and 13 list the apportionments of the 2022 and 2023 TACs of rockfish secondary species in the Central GOA to CV and CP cooperatives.

TABLE 12—FINAL 2022 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	14,814	3.81	564	0.00	0
Sablefish	9,965	6.78	676	3.51	350
Shortraker rockfish	280	0.00	-	40.00	112
Rougheye/blackspotted rockfish	235	0.00	-	58.87	138
Thornyhead rockfish	910	7.84	71	26.50	241

TABLE 13—FINAL 2023 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	12,962	3.81	494	0.00	0
Sablefish	9,495	6.78	644	3.51	333
Shortraker rockfish	280	0.00	0	40.00	112
Rougheye/blackspotted rockfish	234	0.00	0	58.87	138
Thornyhead rockfish	910	7.84	71	26.50	241

Halibut PSC Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl gear and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. In December 2021, the Council recommended halibut PSC limits of 1,706 mt for trawl gear, 257 mt for hook-and-line gear, and 9 mt for the demersal shelf (DSR) rockfish fishery in the SEO District for both 2022 and 2023, consistent with § 679.21.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(ii)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish (§ 679.21(d)(2)(i)(A)). The separate halibut PSC limit for the DSR fishery is intended to prevent that fishery from being impacted from the halibut PSC incurred by other GOA fisheries. NMFS estimates low halibut bycatch in the DSR fishery because (1) the duration of the DSR fishery and the gear soak times are short, (2) the DSR fishery occurs in the winter when there is less overlap in the distribution of DSR and halibut, and (3) the directed commercial DSR fishery has a low DSR TAC. The Alaska Department of Fish and Game sets the commercial GHL for the DSR fishery after deducting estimates of DSR incidental catch in all fisheries (including halibut and subsistence) and allocation to the DSR sport fishery. In 2021, the commercial fishery for DSR was closed due to concerns about declining DSR biomass.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation

with the Council, exempts pot gear, the sablefish IFQ fixed gear fishery categories, and jig gear from the non-trawl halibut PSC limit for 2022 and 2023. The Council recommended, and NMFS approves, these exemptions because: (1) The pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)); (3) some sablefish IFQ fishermen hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2021. The calculated halibut bycatch mortality through December 31, 2021, is 360 mt for trawl gear and 68 mt for hook-and-line gear for a total halibut mortality of 428 mt. This halibut mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region's catch accounting system. This accounting system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Section 679.21(d)(4)(i) and (ii) authorize NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council considered information from the 2021 SAFE report, NMFS catch data, State of Alaska catch data, International Pacific Halibut Commission (IPHC) stock assessment and mortality data, and public testimony when apportioning the halibut PSC limits. NMFS concurs with the Council's recommendations listed in Table 14, which shows the final 2022 and 2023 Pacific halibut PSC limits, allowances, and apportionments.

Section 679.21(d)(4)(iii) and (iv) specify that any unused amounts, or overages, of a seasonal apportionment of a halibut PSC limit will be added to or deducted from the next respective seasonal apportionment within the fishing year.

TABLE 14—FINAL 2022 AND 2023 PACIFIC HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear [1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	30.5	519	January 1–June 10	86	221	January 1–December 31	9
April 1–July 1	20.0	341	June 10–September 1	2	5		
July 1–August 1	27.0	462	September 1–December 31.	12	31		
August 1–October 1	7.5	128					
October 1–December 31	15.0	256					
Total		1,706			257		9

[1] The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the DSR fishery in the SEO District and to the hook-and-line fisheries other than the DSR fishery. The fixed gear sablefish IFQ fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries. Note: Seasonal or sector apportionments may not total precisely due to rounding.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories listed in § 679.21(d)(3)(iii). The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) A deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' (sharks and octopuses) (§ 679.21(d)(3)(iii)). Halibut mortality incurred while directed fishing for skates with trawl gear accrues towards the shallow-water species fishery halibut PSC limit (69 FR 26320, May 12, 2004).

NMFS will combine available trawl halibut PSC limit apportionments during a portion of the second season deep-water and shallow-water species fisheries for use in either fishery from May 15 through June 30 (§ 679.21(d)(4)(iii)(D)). This is intended to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. This provides the deep-water and shallow-water species trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year.

Table 15 lists the final 2022 and 2023 apportionments of trawl halibut PSC limits between the trawl gear deep-water and shallow-water species fishery categories.

Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and CP sectors that are participating in the Rockfish Program. This includes 117 mt of halibut PSC limit to the CV sector and 74 mt of halibut PSC limit to the CP sector. These amounts are allocated from the trawl deep-water species fishery's halibut PSC third seasonal

apportionment. After the combined CV and CP halibut PSC limit allocation of 191 mt to the Rockfish Program, 150 mt remains for the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries during the current fishing year to no more than 55 percent of the unused annual halibut PSC limit apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by any person for the remainder of the fishing year (§ 679.21(d)(4)(iii)(C)).

TABLE 15—FINAL 2022 AND 2023 APPORTIONMENT OF PACIFIC HALIBUT PROHIBITED SPECIES CATCH LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water [1]	Total
January 20–April 1	384	135	519
April 1–July 1	85	256	341
July 1–August 1	121	341	462
August 1–October 1	53	75	128
Subtotal January 20–October 1	643	807	1,450
October 1–December 31 [2]			256
Total			1,706

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through August 1) deep-water species fishery halibut PSC apportionment.

[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Section 679.21(d)(2)(i)(B) requires that the ''other hook-and-line fishery'' halibut PSC limit apportionment to vessels using hook-and-line gear must be apportioned between CVs and CPs in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the ''other hook-and-line fishery'' halibut PSC limit between the hook-and-line CV and CP sectors were included in the proposed rule to implement Amendment 83 to the FMP (76 FR 44700, July 26, 2011) and are not repeated here.

Pursuant to § 679.21(d)(2)(iii), the hook-and-line halibut PSC limit for the ''other hook-and-line fishery'' is apportioned between the CV and CP sectors in proportion to the total Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass between the Western, Central, and Eastern GOA. Pacific cod is apportioned among these three management areas based on the percentage of overall biomass per area, as calculated in the 2021 Pacific cod stock assessment. Updated information in the final 2021 SAFE report describes this distributional calculation, which allocates ABC among GOA regulatory areas on the basis of the three most recent stock surveys. For 2022 and 2023, the distribution of the total GOA Pacific cod ABC is 29 percent to the Western GOA, 61 percent to the Central GOA, and 10 percent to the Eastern GOA. Therefore, the calculations made in accordance with § 679.21(d)(2)(iii) incorporate the most recent information on GOA Pacific cod distribution and allocations with respect to establishing the annual halibut PSC limits for the CV and CP hook-and-line sectors. Additionally, the annual halibut PSC limits for both the CV and CP sectors of the ''other hook-and-line fishery'' are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent.

For 2022 and 2023, NMFS apportions halibut PSC limits of 150 mt and 107 mt to the hook-and-line CV and hook-and-line CP sectors, respectively. Table 16 lists the final 2022 and 2023 apportionments of halibut PSC limits between the hook-and-line CV and the hook-and-line CP sectors of the ''other hook-and-line fishery.''

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the CV or CP hook-and-line sectors that comprise the two sectors of the ''other hook-and-line fishery'' for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other sector for the remainder of that fishing year (§ 679.21(d)(2)(iii)(C)), if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations.

TABLE 16—FINAL 2022 AND 2023 APPORTIONMENTS OF THE ''OTHER HOOK-AND-LINE FISHERY'' ANNUAL HALIBUT PROHIBITED SPECIES CATCH ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

''Other than DSR'' allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
257	Catcher Vessel	150	January 1–June 10	86	129
			June 10–September 1	2	3
			September 1–December 31	12	18

TABLE 16—FINAL 2022 AND 2023 APPORTIONMENTS OF THE "OTHER HOOK-AND-LINE FISHERY" ANNUAL HALIBUT PROHIBITED SPECIES CATCH ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS—Continued

[Values are in metric tons]

"Other than DSR" allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
	Catcher/Processor	107	January 1–June 10	86	92
			June 10–September 1	2	2
			September 1–December 31	12	13

Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut stock using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2021 Pacific halibut stock assessment (December 2021), available on the IPHC website at *www.iphc.int.* The IPHC considered the 2021 Pacific halibut stock assessment at its January 2022 annual meeting when it set the 2022 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers' estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual GOA stock assessment process. The DMR methodology and findings are included as an appendix to the annual GOA groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the GOA Plan Team, SSC, and the Council. A summary of the revised methodology is contained in the GOA proposed 2017 and 2018 harvest specifications (81 FR 87881, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability in the methodology used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling, which could provide more recent and accurate data and which could improve the accuracy of estimation and progress on methodology. The new methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the December 2021 meeting, the SSC, AP, and the Council concurred with the revised DMR estimation methodology, and NMFS adopts for 2022 and 2023 the DMRs calculated under the revised methodology, which uses an updated 2-year reference period. The final 2022 and 2023 DMRs in this rule are unchanged from the DMRs in the proposed 2022 and 2023 harvest specifications (86 FR 68982, December 6, 2021). Table 17 lists these final 2022 and 2023 DMRs.

TABLE 17—FINAL 2022 AND 2023 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Values are percent of halibut assumed to be dead]

Gear	Sector	Groundfish fishery	Halibut discard mortality rate (percent)
Pelagic trawl	Catcher vessel	All	100
	Catcher/processor	All	100
Non-pelagic trawl	Catcher vessel	Rockfish Program	66
	Catcher vessel	All others	69
	Mothership and catcher/processor	All	83
Hook-and-line	Catcher/processor	All	15
	Catcher vessel	All	12
Pot	Catcher vessel and catcher/processor	All	29

Chinook Salmon Prohibited Species Catch Limits

Amendment 93 to the FMP (77 FR 42629, July 20, 2012) established separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock trawl fishery. These limits require that NMFS close the pollock directed fishery in the Western and Central Regulatory Areas of the GOA if the applicable Chinook salmon PSC limit in that regulatory area is

reached (§ 679.21(h)(8)). The annual Chinook salmon PSC limits in the pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set at § 679.21(h)(2)(i) and (ii).

Amendment 97 to the FMP (79 FR 71350, December 2, 2014) established an initial annual PSC limit of 7,500 Chinook salmon for the trawl non-pollock groundfish fisheries in the Western and Central GOA. This limit is apportioned among the three sectors that conduct directed fishing for groundfish species other than pollock: 3,600 Chinook salmon to trawl CPs; 1,200 Chinook salmon to trawl CVs participating in the Rockfish Program; and 2,700 Chinook salmon to trawl CVs not participating in the Rockfish Program (§ 679.21(h)(4)). NMFS will monitor the Chinook salmon PSC in the trawl non-pollock groundfish fisheries and close an applicable sector if it reaches its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl CPs and trawl CVs not participating in the Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits. If either or both of these two sectors limits its use of Chinook salmon PSC to a specified threshold amount in 2021 (3,120 for trawl CPs and 2,340 for Non-Rockfish Program trawl CVs), that sector will receive an incremental increase to its 2022 Chinook salmon PSC limit (§ 679.21(h)(4)). In 2021, the trawl CP sector did not exceed 3,120 Chinook salmon PSC; therefore, the 2022 trawl CP sector Chinook salmon PSC limit will be 4,080 Chinook salmon. In 2021, the Non-Rockfish Program trawl CV sector exceeded 2,340 Chinook salmon PSC; therefore, the 2022 Non-Rockfish Program trawl CV sector Chinook salmon PSC limit will be 2,700 Chinook salmon.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA CPs and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA as compared to those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 feet (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands (BSAI) less than 5,100 mt, and have made at least 40 GOA groundfish landings from 1995 through 1997 are exempt from GOA CV groundfish sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iv) establishes the CV groundfish sideboard limitations in the GOA based on the aggregate retained catch of non-exempt AFA CVs of each sideboard species or species group from 1995 through 1997 divided by the sum of the TACs for that species or species group available to CVs over the same period. NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit non-exempt AFA CVs from directed fishing for specific groundfish species or species groups subject to sideboard limits (§ 679.20(d)(1)(iv)(D) and Table 56 to 50 CFR part 679). Sideboard limits not subject to the final rule (84 FR 2723, February 8, 2019) continue to be calculated and included in the GOA annual harvest specifications.

Tables 18 and 19 list the final 2022 and 2023 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 18 and 19.

TABLE 18—FINAL 2022 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2022 TACs [3]	Final 2022 non-exempt AFA CV sideboard limit
Pollock	A Season—January 20–May 31	Shumagin (610)	0.6047	1,132	685
		Chirikof (620)	0.1167	52,304	6,104
		Kodiak (630)	0.2028	8,080	1,639
	B Season—September 1–November 1	Shumagin (610)	0.6047	22,582	13,655
		Chirikof (620)	0.1167	16,946	1,978
		Kodiak (630)	0.2028	21,988	4,459
	Annual	WYK (640)	0.3495	6,722	2,349
		SEO (650)	0.3495	11,363	3,971
Pacific cod	A Season [1]—January 1–June 10	W	0.1331	4,433	590
		C	0.0692	9,498	657
	B Season [2]—September 1–December 31	W	0.1331	2,526	336
		C	0.0692	5,316	368
Flatfish, shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	25,305	1,485
Flatfish, deep-water	Annual	C	0.0647	2,139	138
		E	0.0128	3,513	45
Rex sole	Annual	C	0.0384	12,076	464
Arrowtooth flounder	Annual	C	0.0280	68,394	1,915
Flathead sole	Annual	C	0.0213	15,400	328
Pacific ocean perch	Annual	C	0.0748	30,806	2,304

TABLE 18—FINAL 2022 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2022 TACs [3]	Final 2022 non-exempt AFA CV sideboard limit
		E	0.0466	4,860	226
Northern rockfish	Annual	C	0.0277	3,202	89

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.
[3] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

TABLE 19—FINAL 2023 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2023 TACs [3]	Final 2023 non-exempt AFA CV sideboard limit
Pollock	A Season—January 20–May 31	Shumagin (610)	0.6047	1,122	679
		Chirikof (620)	0.1167	51,845	6,050
		Kodiak (630)	0.2028	8,009	1,624
	B Season—September 1–November 1	Shumagin (610)	0.6047	22,384	13,535
		Chirikof (620)	0.1167	16,797	1,960
		Kodiak (630)	0.2028	21,795	4,420
	Annual	WYK (640)	0.3495	6,663	2,329
		SEO (650)	0.3495	11,363	3,971
Pacific cod	A Season [1]—January 1–June 10	W	0.1331	3,879	516
		C	0.0692	8,311	575
	B Season [2]—September 1–December 31	W	0.1331	2,210	294
		C	0.0692	4,651	322
Flatfish, shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	26,743	1,570
Flatfish, deep-water	Annual	C	0.0647	2,105	136
		E	0.0128	3,457	44
Rex sole	Annual	C	0.0384	13,054	501
Arrowtooth flounder	Annual	C	0.0280	67,493	1,890
Flathead sole	Annual	C	0.0213	15,400	328
Pacific ocean perch	Annual	C	0.0748	29,869	2,234
		E	0.0466	4,712	220
Northern rockfish	Annual	C	0.0277	3,061	85

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.
[3] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

Non-Exempt AFA Catcher Vessel Halibut PSC Limits

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)(ii)). Table 20 lists the final 2022 and 2023 non-exempt AFA CV halibut PSC sideboard limits for vessels using trawl gear in the GOA.

TABLE 20—FINAL 2022 AND 2023 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2022 and 2023 Halibut PSC limit	2022 and 2023 non-exempt AFA CV Halibut PSC limit
1	January 20–April 1	shallow-water	0.340	384	131
		deep-water	0.070	135	9

TABLE 20—FINAL 2022 AND 2023 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA—Continued

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2022 and 2023 Halibut PSC limit	2022 and 2023 non-exempt AFA CV Halibut PSC limit
2	April 1–July 1	shallow-water	0.340	85	29
		deep-water	0.070	256	18
3	July 1–August 1	shallow-water	0.340	121	41
		deep-water	0.070	341	24
4	August 1–October 1	shallow-water	0.340	53	18
		deep-water	0.070	75	5
5	October 1–December 31	all targets	0.205	256	52
Annual		Total shallow-water			219
		Total deep-water			56
		Total, all season and categories		1,706	328

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization (CR) Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the CR Program, including Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), and Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015). Also, NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit non-AFA crab vessels from directed fishing for all groundfish species or species groups subject to sideboard limits, except for Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas (§ 680.22(e)(1)(iii)). Accordingly, the GOA annual harvest specifications will include the non-AFA crab vessel groundfish sideboard limits for only Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas.

Tables 21 and 22 list the final 2022 and 2023 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 21—FINAL 2022 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2022 TACs	Final 2022 non-AFA crab vessel sideboard limit
Pacific cod	A Season—January 1–June 10	Western Pot CV	0.0997	4,433	442
		Central Pot CV	0.0474	9,498	450
	B Season—September 1–December 31	Western Pot CV	0.0997	2,526	252
		Central Pot CV	0.0474	5,316	252

TABLE 22—FINAL 2023 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2023 TACs	Final 2023 non-AFA crab vessel sideboard limit
Pacific cod	A Season—January 1–June 10	Western Pot CV	0.0997	3,879	387
		Central Pot CV	0.0474	8,311	394
	B Season—September 1–December 31	Western Pot CV	0.0997	2,210	220

TABLE 22—FINAL 2023 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2023 TACs	Final 2023 non-AFA crab vessel sideboard limit
		Central Pot CV	0.0474	4,651	220

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, CP rockfish sideboard restrictions, and CP opt-out vessel sideboard restrictions (§ 679.82(c)(1)). These sideboards are intended to limit the ability of rockfish harvesters to expand into other GOA groundfish fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

CPs participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These CPs are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31 (§ 679.82(e)(2)). Holders of CP-designated LLP licenses that opt out of participating in a Rockfish Program cooperative will be able to access that portion of each rockfish sideboard limit that is not assigned to rockfish cooperatives (§ 679.82(e)(7)). The sideboard ratio for each fishery in the West Yakutat District and the Western GOA is set forth in § 679.82(e)(3) and (4). Tables 23 and 24 list the final 2022 and 2023 Rockfish Program CP sideboard limits in the West Yakutat District and the Western GOA. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat District are not displayed.

TABLE 23—FINAL 2022 ROCKFISH PROGRAM SIDEBOARD LIMITS FOR THE WESTERN GOA AND WEST YAKUTAT DISTRICT BY FISHERY FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	CP sector (percent of TAC)	Final 2022 TACs	Final 2022 CP limit
Western GOA	Dusky rockfish	72.3	269	194
	Pacific ocean perch	50.6	2,602	1,317
	Northern rockfish	74.3	1,944	1,444
West Yakutat District	Dusky rockfish	Confidential [1]	427	Confidential.[1]
	Pacific ocean perch	Confidential.[1]	1,409	Confidential.[1]

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

TABLE 24—FINAL 2023 ROCKFISH PROGRAM SIDEBOARD LIMITS FOR THE WESTERN GOA AND WEST YAKUTAT DISTRICT BY FISHERY FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	CP sector (percent of TAC)	Final 2023 TACs	Final 2023 CP limit
Western GOA	Dusky rockfish	72.3	259	187.
	Pacific ocean perch	50.6	2,523	1,277.
	Northern rockfish	74.3	1,859	1,381.
West Yakutat District	Dusky rockfish	Confidential [1]	412	Confidential.[1]
	Pacific ocean perch	Confidential [1]	1,366	Confidential.[1]

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Under the Rockfish Program, the CP sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries from July 1 through July 31 (§ 679.82(e)(3) and (5)). Halibut PSC sideboard ratios by fishery are set forth in § 679.82(e)(5). No halibut PSC sideboard limits apply to the CV sector, as CVs participating in cooperatives receive a portion of the annual halibut PSC limit. CPs that opt out of the Rockfish Program are able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to CP rockfish cooperatives. The sideboard provisions for CPs that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels that may choose to opt out. After March 1, NMFS will determine which CPs have opted-out of the Rockfish Program in 2022, and NMFS will know the ratios and amounts used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboards for 2022 and post these limits on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-*

reports#central-goa-rockfish. Table 25 lists the final 2022 and 2023 Rockfish Program halibut PSC sideboard limits for the CP sector.

TABLE 25—FINAL 2022 AND 2023 ROCKFISH PROGRAM HALIBUT PSC SIDEBOARD LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	2022 and 2023 halibut mortality limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	1,706	2	43

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl CP sector. The Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment 80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the fishing vessel (F/V) *Golden Fleece,* to amounts no greater than the limits listed in Table 37 to 50 CFR part 679. Under § 679.92(d), the F/V *Golden Fleece* is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004 (72 FR 52668, September 14, 2007). Tables 26 and 27 list the final 2022 and 2023 groundfish sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 26 and 27.

TABLE 26—FINAL 2022 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2022 TAC (mt)	2022 Amendment 80 vessel sideboard limit (mt)
Pollock	A Season—January 20–May 31	Shumagin (610)	0.003	1,132	3
		Chirikof (620)	0.002	52,304	105
		Kodiak (630)	0.002	8,080	16
	B Season—September 1—November 1.	Shumagin (610)	0.003	22,582	68
		Chirikof (620)	0.002	16,946	34
		Kodiak (630)	0.002	21,988	44
	Annual	WYK (640)	0.002	6,722	13
Pacific cod	A Season [1]—January 1–June 10.	W	0.020	4,433	89
		C	0.044	9,498	418
	B Season [2]—September 1–December 31.	W	0.020	2,526	51
		C	0.044	5,316	234
	Annual	WYK	0.034	2,338	79
Pacific ocean perch	Annual	W	0.994	2,602	2,586
		WYK	0.961	1,409	1,354
Northern rockfish	Annual	W	1.000	1,944	1,944
Dusky rockfish	Annual	W	0.764	269	206
		WYK	0.896	427	383

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 27—FINAL 2023 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2023 TAC (mt)	2023 Amendment 80 vessel sideboard limit (mt)
Pollock	A Season—January 20–May 31	Shumagin (610)	0.003	1,122	3
		Chirikof (620)	0.002	51,845	104
		Kodiak (630)	0.002	8,009	16

TABLE 27—FINAL 2023 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2023 TAC (mt)	2023 Amendment 80 vessel sideboard limit (mt)
	B Season—September 1–November 1.	Shumagin (610)	0.003	22,384	67
		Chirikof (620)	0.002	16,797	34
		Kodiak (630)	0.002	21,795	44
	Annual	WYK (640)	0.002	6,663	13
Pacific cod	A Season [1]—January 1–June 10.	W	0.020	3,879	78
		C	0.044	8,311	366
	B Season [2]—September 1–December 31.	W	0.020	2,210	44
		C	0.044	4,651	205
	Annual	WYK	0.034	2,045	70
Pacific ocean perch	Annual	W	0.994	2,523	2,508
		WYK	0.961	1,366	1,313
Northern rockfish	Annual	W	1.000	1,859	1,859
Dusky rockfish	Annual	W	0.764	259	198
		WYK	0.896	412	369

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC cooperative quota under the Rockfish Program and the exemption of the F/V *Golden Fleece* from this restriction (§ 679.92(b)(2)). Table 28 lists the final 2022 and 2023 halibut PSC sideboard limits for Amendment 80 Program vessels. These tables incorporate the maximum percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels as contained in Table 38 to 50 CFR part 679. Any residual amount of a seasonal Amendment 80 halibut PSC sideboard limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 28—FINAL 2022 AND 2023 HALIBUT PSC SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2022 and 2023 annual halibut PSC limit (mt)	2022 and 2023 Amendment 80 vessel halibut PSC limit
1	January 20–April 1	shallow-water	0.0048	1,706	8
		deep-water	0.0115	1,706	20
2	April 1–July 1	shallow-water	0.0189	1,706	32
		deep-water	0.1072	1,706	183
3	July 1–August 1	shallow-water	0.0146	1,706	25
		deep-water	0.0521	1,706	89
4	August 1–October 1	shallow-water	0.0074	1,706	13
		deep-water	0.0014	1,706	2
5	October 1–December 31	shallow-water	0.0227	1,706	39
		deep-water	0.0371	1,706	63
Total:					474

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, then the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing season or year, NMFS will prohibit directed fishing for that species or species group in the specified GOA subarea, regulatory area, or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species listed in Table 29 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2022 and 2023 fishing years.

TABLE 29—2022 AND 2023 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount and year (if amounts differ by year)
Pollock	all/offshore	not applicable.[1]
Sablefish[2]	all/trawl	3,194 (2022). 3,117 (2023).
Pacific cod	Western, CP, trawl	161 (2022), 141 (2023).
	Central, CP, trawl	616 (2022), 539 (2023).
Shortraker rockfish[2]	all	705.
Rougheye/blackspotted rockfish[2]	all	788 (2022). 781 (2023).
Thornyhead rockfish[2]	all	1,953.
Other rockfish	all	1,610.
Atka mackerel	all	3,000.
Big skate	all	2,867.
Longnose skate	all	2,712.
Other skates	all	984.
Sharks	all	3,755.
Octopuses	all	980.

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

[2] Closures are not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program because cooperatives are prohibited from exceeding their allocations (§ 679.7(n)(6)(viii)).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 29 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 29 effective at 1200 hours, A.l.t., March 2, 2022, through 2400 hours, A.l.t., December 31, 2023.

Closures implemented under the 2021 and 2022 GOA harvest specifications for groundfish (86 FR 10184, February 19, 2021) remain effective under authority of these final 2022 and 2023 harvest specifications and until the date specified in those closure notices. Closures are posted at the following website under the Alaska filter for Management Areas: *https://www.fisheries.noaa.gov/rules-and-announcements/bulletins.*

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found at 50 CFR part 679. NMFS may implement other closures during the 2022 and 2023 fishing years as necessary for effective conservation and management.

Comments and Responses

NMFS did not receive any comments during the public comment period for the proposed groundfish harvest specifications.

Classification

NMFS has determined that the final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from review under Executive Order 12866.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the EIS. In January 2022, NMFS prepared a SIR for this action to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (SEIS; 40 CFR 1501.11(b); § 1502.9(d)(1)). Copies of the EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. The preferred alternative is a harvest strategy in which TACs are set at a level within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The annual SIR evaluates the need to prepare a SEIS for the 2022 and 2023 groundfish harvest specifications. An SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)). After reviewing the information contained in the SIR and SAFE report, the Regional Administrator has determined that (1) approval of the 2022 and 2023 harvest specifications, which were set according to the preferred harvest strategy in the EIS, does not constitute a substantial change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2022 and 2023 harvest specifications will result in environmental, social, and economic impacts within the scope of those analyzed and disclosed in the EIS. Therefore, an SEIS is not necessary to implement the 2022 and 2023 harvest specifications.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA). The

following constitutes the FRFA prepared in the final action.

Section 604 of the RFA describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 6, 2021 (86 FR 68982). NMFS prepared an IRFA to accompany the proposed action, and included the IRFA in the proposed rule. The comment period closed on January 5, 2022. No comments were received on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

The entities directly regulated by this action are: (1) Entities operating vessels with groundfish Federal fishing permits (FFPs) catching FMP groundfish in Federal waters; (2) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the State-waters parallel fisheries; and (3) all entities operating vessels fishing for halibut inside 3 miles (5.6 km) of the shore (whether or not they have FFPs).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $11 million for all its affiliated operations worldwide.

Using the most recent data available (2020), the estimated number of directly regulated small entities includes approximately 699 individual catcher vessel and CP entities with gross revenues meeting small entity criteria. This estimate does not account for corporate affiliations among vessels, and for cooperative affiliations among fishing entities, since some of the fishing vessels operating in the GOA are members of AFA inshore pollock cooperatives, GOA rockfish cooperatives, or BSAI CR Program cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA because the aggregate gross receipts of all participating members exceed the $11 million threshold. After accounting for membership in these cooperatives, there are an estimated 696 small CV entities and 3 small CP entities remaining in the GOA groundfish sector. However, the estimate of these 696 CVs may be an overstatement of the number of small entities. This latter group of vessels had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs, are estimated to be $340,000, $650,000, and $1.71 million, respectively. Average gross revenues for CP entities are confidential.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This action implements the final 2022 and 2023 harvest specifications, apportionments, and halibut PSC limits for the groundfish fishery of the GOA. This action is necessary to establish harvest limits for groundfish during the 2022 and 2023 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the final harvest specifications is governed by the Council's harvest strategy for the catch of groundfish in the GOA. The harvest strategy was selected previously from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended by the SSC. Under this preferred alternative harvest strategy, TACs are set within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP; and while the specific TAC numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. This final action implements the preferred alternative harvest strategy previously chosen by the Council to set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and as recommended by the Council. This is the method for determining TACs that has been used in the past.

The final 2022 and 2023 TACs associated with preferred harvest strategy are those recommended by the Council in December 2021. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team, and reviewed by the Council's SSC. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations. The sum of all TACs remains within the OY for the GOA consistent with § 679.20(a)(1)(i)(B).

The final 2022 and 2023 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The final 2022 and 2023 TACs are based on the best available biological and socioeconomic information. The final 2022 and 2023 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2021 SAFE report, which is the most recent, completed SAFE report. Accounting for the most recent biological information to set the final OFLs, ABCs, and TACs is consistent with the objectives for this action, as well as National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2)) that actions shall be based on the best scientific information available.

Under this action, the final ABCs reflect harvest amounts that are less than the specified overfishing levels. The final TACs are within the range of final ABCs recommended by the SSC and do not exceed the biological limits

recommended by the SSC (the ABCs and overfishing levels). For most species and species groups in the GOA, the Council recommended, and NMFS sets, final TACs equal to final ABCs, which is intended to maximize harvest opportunities in the GOA, unless other conservation or management reasons support setting TAC amounts less than the ABCs.

For the following species and species groups, the Council recommended and NMFS sets TACs that are less than the ABCs: For pollock for the combined Western and Central GOA and West Yakutat District area; Pacific cod; shallow-water flatfish in the Western GOA; arrowtooth flounder in the Western GOA and the SEO District; flathead sole in the Western and Central GOA, Atka mackerel; and ''other rockfish'' in the SEO District. These specific reductions were reviewed and recommended by the Council's AP, and the Council in turn adopted the AP's recommendations for the final 2022 and 2023 TACs.

Moreover, increasing TACs for some species may not result in increased harvest opportunities for those species. This is due to a variety of reasons. There may be a lack of commercial or market interest in some species. Additionally, there are fixed, and therefore constraining, PSC limits associated with the harvest of the GOA groundfish species that can lead to an underharvest of flatfish TACs. For this reason, the shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. The ''other rockfish'' TAC in the SEO District is set to reduce the amount of discards of the species in that complex. Finally, the TACs for two species (pollock and Pacific cod) cannot be set equal to ABC, as the TAC must be reduced to account for the State's GHLs in these fisheries. The W/C/WYK Regulatory Area pollock TAC and the GOA Pacific cod TACs are therefore set to account for the State's GHLs for the State water pollock and Pacific cod fisheries so that the ABCs are not exceeded.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, there are no significant alternatives to the final rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. This action is economically beneficial to entities operating in the GOA, including small entities. The action specifies TACs for commercially-valuable species in the GOA and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council solicited input from stakeholders, the Council concluded that these final harvest specifications would best accomplish the stated objectives articulated in the preamble for this final rule and in applicable statutes and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Adverse impacts on marine mammals, or endangered or threatened species, resulting from fishing activities conducted under this rule are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the date of effectiveness for this rule because delaying this rule is contrary to the public interest. The Plan Team review of the 2021 SAFE report occurred in November 2021, and, based on the 2021 SAFE report, the Council considered and recommended the final harvest specifications in December 2021. Accordingly, NMFS's review of the final 2022 and 2023 harvest specifications could not begin until after the December 2021 Council meeting, and after the public had time to comment on the proposed action. Thus, some affected fisheries could close soon, as they are already close to reaching their TACs, and such closures would cause unnecessary economic harm to the fisheries in the cases where this final rule increases some of the groundfish TACs.

For all fisheries not currently closed because the TACs established under the final 2021 and 2022 harvest specifications (86 FR 10184, February 19, 2021) have not yet been reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because those fisheries have nearly reached those previously set TACs. If implemented immediately, this final rule would allow these fisheries to continue fishing, because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing.

In addition, immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly pertinent for those species that have lower 2022 ABCs and TACs than those established in the 2021 and 2022 harvest specifications (86 FR 10184, February 19, 2021), including target species such as sablefish. If implemented immediately, this rule would ensure that NMFS can properly manage those fisheries for which this rule sets lower 2022 ABCs and TACs, which are based on the most recent biological information on the condition of stocks. The changes between the proposed 2022 ABCs and TACs are discussed earlier in the section titled ''Changes from the Proposed 2022 and 2023 Harvest Specifications in the GOA.''

Certain fisheries, such as those for pollock, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sharks, and octopuses, are critical either as directed fisheries or as incidental catch in other fisheries. Thus, for those species that have higher 2022 TACs under the final 2021 and 2022 harvest specifications (86 FR 10184, February 19, 2021) than the TACs established by this final rule, there is some risk of exceeding some of these TAC limits. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If the date of effectiveness of this rule were to be delayed 30 days and a TAC was reached during those 30 days, NMFS would be required to close directed fishing or prohibit retention for the applicable species. Such closures and unnecessary discards would cause confusion to the industry and potential economic harm to fishermen, undermining the intent of this rule. Waiving the 30-day delay in the date of effectiveness allows NMFS to prevent this potential economic harm that could occur should the previously set 2022 TACs (as set under the 2021 and 2022 harvest specifications) be reached during such a delay. In addition, determining which fisheries may close in advance is nearly impossible because these fisheries are affected by several factors, including fishing effort, weather, movement of fishery stocks and market price, which cannot be predicted. Furthermore, the closure of one fishery has a cascading effect on other fisheries; the closure would free up fishing vessels, allowing them to move from closed fisheries to open fisheries, thereby increasing the fishing capacity in those open fisheries, and

potentially causing them to close sooner.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before the initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard-limited sectors.

If the final harvest specifications are not effective by March 6, 2022, which is the start of the 2022 Pacific halibut season as specified by the IPHC, the fixed gear sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both fixed gear sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of these final 2022 and 2023 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

Finally, immediate effectiveness also provides the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, in accordance with 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in the date of effectiveness.

Small Entity Compliance Guide

This final rule is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2022 and 2023 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2022 and 2023 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific OFL, ABC, TAC, and PSC amounts are provided in tables in this rule to assist the reader. These tables also are individually available online at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-harvest-specifications.* NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L 109–479.

Dated: February 17, 2022.

Samuel D. Rauch, III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054]

RIN 0648–XY119

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2022 and 2023 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces final 2022 and 2023 harvest specifications, apportionments, and prohibited species catch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the remainder of the 2022 and the start of the 2023 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The 2022 harvest specifications supersede those previously set in the final 2021 and 2022 harvest specifications, and the 2023 harvest specifications will be superseded in early 2023 when the final 2023 and 2024 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Harvest specifications and closures are effective from 1200 hours, Alaska local time (A.l.t.), March 2, 2022, through 2400 hours, A.l.t., December 31, 2023.

ADDRESSES: Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (EIS), Record of Decision (ROD), and the annual Supplementary Information Reports (SIRs) to the Final EIS prepared for this action are available from *https://www.fisheries.noaa.gov/region/alaska.* The 2021 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2021, as well as the SAFE reports for previous years, are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Ave., Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from the Council's website at *https://www.npfmc.org/.*

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

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species category. The sum of all TAC for all groundfish species in the BSAI must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)(A)). This final rule specifies the sum of the TAC at 1,871,000 mt for 2022 and 2.0 million mt for 2023. NMFS also must specify apportionments of TAC; prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves established by § 679.21; seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; American Fisheries Act allocations; Amendment 80 allocations; Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii); and acceptable biological catch (ABC) surpluses and reserves for CDQ groups and any Amendment 80 cooperatives for flathead sole, rock sole, and yellowfin sole. The final harvest specifications set forth in Tables 1 through 22 of this action satisfy these requirements.

Section 679.20(c)(3)(i) further requires that NMFS consider public comment on the proposed harvest specifications and, after consultation with the Council, publish final harvest specifications in

the **Federal Register**. The proposed 2022 and 2023 harvest specifications for the groundfish fishery of the BSAI were published in the **Federal Register** on December 3, 2021 (86 FR 68608). Comments were invited and accepted through January 3, 2022. As discussed in the Response to Comments section below, NMFS received no comments during the public comment period for the proposed BSAI groundfish harvest specifications.

NMFS consulted with the Council on the final 2022 and 2023 harvest specifications during the December 2021 Council meeting. After considering public comments during public meetings, as well as biological and socioeconomic data that were available at the Council's December meeting, NMFS implements in this final rule the final 2022 and 2023 harvest specifications as recommended by the Council.

ABC and TAC Harvest Specifications

The final ABC amounts for Alaska groundfish are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest.

In December 2021, the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP) reviewed current biological and harvest information about the condition of the BSAI groundfish stocks. The Council's BSAI Groundfish Plan Team (Plan Team) compiled and presented this information in the 2021 SAFE report for the BSAI groundfish fisheries, dated November 2021 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. NMFS notified the public of the comment period for these harvest specifications—and of the publication of the 2021 SAFE report—in the notice of proposed harvest specifications. From the data and analyses in the SAFE report, the Plan Team recommended an OFL and ABC for each species or species group at the November 2021 Plan Team meeting.

In December 2021, the SSC, AP, and Council reviewed the Plan Team's recommendations. The final TAC recommendations were based on the ABCs, and were adjusted for other biological and socioeconomic considerations, including maintaining the sum of all the TACs within the required OY range of 1.4 million to 2.0 million mt. As required by annual catch limit rules for all fisheries (74 FR 3178, January 16, 2009), none of the Council's recommended 2022 or 2023 TACs exceed the final 2022 or 2023 ABCs for any species or species group. NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the preferred harvest strategy outlined in the FMP and the biological condition of groundfish stocks as described in the 2021 SAFE report that was approved by the Council. Therefore, this final rule provides notice that the Secretary of Commerce approves the final 2022 and 2023 harvest specifications as recommended by the Council.

The 2022 harvest specifications set in this final action supersede the 2022 harvest specifications previously set in the final 2021 and 2022 harvest specifications (86 FR 11449, February 25, 2021). The 2023 harvest specifications herein will be superseded in early 2023 when the final 2023 and 2024 harvest specifications are published. Pursuant to this final action, the 2022 harvest specifications therefore will apply for the remainder of the current year (2022), while the 2023 harvest specifications are projected only for the following year (2023) and will be superseded in early 2023 by the final 2023 and 2024 harvest specifications. Because this final action (published in early 2022) will be superseded in early 2023 by the publication of the final 2023 and 2024 harvest specifications, it is projected that this final action will implement the harvest specifications for the BSAI for approximately one year.

Other Actions Affecting the 2022 and 2023 Harvest Specifications

State of Alaska Guideline Harvest Levels

For 2022 and 2023, the Board of Fisheries (BOF) for the State of Alaska (State) established the guideline harvest level (GHL) for vessels using pot gear in State waters in the Bering Sea subarea (BS) equal to 11 percent of the Pacific cod ABC in the BS. The State's pot gear BS GHL will increase one percent annually up to 15 percent of the BS ABC, if 90 percent of the GHL is harvested by November 15 of the preceding year. If 90 percent of the 2022 BS GHL is not harvested by November 15, 2022, then the 2023 BS GHL will remain at the same percentage as the 2022 BS GHL (11 percent). If 90 percent of the 2022 BS GHL is harvested by November 15, 2022, then the 2023 BS GHL will increase by one percent and the 2023 BS TAC will be set to account for the increased BS GHL. Also, for 2021 and 2022, the BOF established an additional GHL for vessels using jig gear in State waters in the BS equal to 45 mt of Pacific cod in the BS. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal water Pacific cod removals from the BS not exceed the ABC recommendations for Pacific cod in the BS. Accordingly, the Council recommended, and NMFS approves, that the 2022 and 2023 Pacific cod TACs in the BS account for the State's GHLs for Pacific cod caught in State waters in the BS.

For 2022 and 2023, the BOF for the State established the GHL in State waters in the Aleutian Islands subarea (AI) equal to 39 percent of the AI ABC. The AI GHL will increase annually by 4 percent of the AI ABC, if 90 percent of the GHL is harvested by November 15 of the preceding year, but may not exceed 39 percent of the AI ABC or 15 million pounds (6,804 mt). For 2022, 39 percent of the AI ABC is 8,034 mt, which exceeds the AI GHL limit of 6,804 mt. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal water Pacific cod removals from the AI not exceed the ABC recommendations for Pacific cod in the AI. Accordingly, the Council recommended, and NMFS approves, that the 2022 and 2023 Pacific cod TACs in the AI account for the State's GHL of 6,804 mt for Pacific cod caught in State waters in the AI.

Abundance Based Management (ABM) of Amendment 80 Program Halibut PSC Limit

At the December 2021 meeting, the Council recommended that the ABM Program that would determine the annual Amendment 80 halibut PSC limit be based on the most recent survey values and the PSC limit value associated with those survey values. Under this ABM Program, the Amendment 80 halibut PSC limit would increase and decrease according to the survey indices of abundance, and would be responsive to changing halibut stock conditions that affect all halibut users, while never exceeding the current Amendment 80 PSC limit. If approved by the Secretary of Commerce, the

rulemaking implementing this action would occur in either 2023 (mid-year) or the beginning of the 2024 fishing year and supersede the current Amendment 80 halibut PSC limits.

Changes From the Proposed 2022 and 2023 Harvest Specifications for the BSAI

The Council's recommendations for the proposed 2022 and 2023 harvest specifications (86 FR 68608, December 3, 2021) were based largely on information contained in the 2020 SAFE report for the BSAI groundfish fisheries. Through the proposed harvest specifications, NMFS notified the public that these harvest specifications could change, as the Council would consider information contained in the 2021 SAFE report; recommendations from the Plan Team, SSC, and AP; and public comments when making its recommendations for final harvest specifications at the December 2021 Council meeting. NMFS further notified the public that, as required by the FMP and its implementing regulations, the sum of the TACs must be within the OY range of 1.4 million and 2.0 million mt.

Information contained in the 2021 SAFE report indicates biomass changes from the 2020 SAFE report for several groundfish species. The 2021 SAFE report was made available for public review during the public comment period for the proposed harvest specifications. At the December 2021 Council meeting, the SSC recommended the 2022 and 2023 OFLs and ABCs based on the best and most recent information contained in the 2021 SAFE report. The SSC's recommendation resulted in an ABC sum total for all BSAI groundfish species in excess of 2.0 million mt for both 2022 and 2023.

Based on lower spawning biomass estimates, the Council recommends final BS pollock TACs decrease by 289,000 mt in 2022 and 111,000 mt in 2023 compared to the proposed 2022 and 2023 BS pollock TACs. The large reduction in pollock TAC leads to more available TAC for other fisheries while still maintaining an overall total TAC within the required OY range of 1.4 to 2.0 million mt. This leads to an increase to almost all non-pollock TACs in 2022 and 2023, except for TACs for those species restricted by biomass limitations. Specifically, there were no other decreases in non-pollock TACs in 2022. In 2023, there were small decreases in terms of tonnage and percentage decrease from proposed TACs for Bering Sea (BS) Greenland turbot, Aleutian Islands (AI) Greenland turbot, BS Pacific ocean perch, Central Aleutian Islands (CAI) Pacific ocean perch, and Eastern Aleutian Islands (EAI) Pacific ocean perch.

The changes to TACs between the proposed and final harvest specifications are based on the most recent scientific and socioeconomic information and are consistent with the FMP, regulatory obligations, and harvest strategy as described in the proposed and final harvest specifications, including the required OY range of 1.4 million to 2.0 million mt. These changes are compared in Table 1A.

Table 1 lists the Council's recommended final 2022 OFL, ABC, TAC, initial TAC (ITAC), CDQ reserve allocations, and non-specified reserves of the BSAI groundfish species or species groups; and Table 2 lists the Council's recommended final 2023 OFL, ABC, TAC, ITAC, CDQ reserve allocations, and non-specified reserves of the BSAI groundfish species or species groups. NMFS concurs in these recommendations. These final 2022 and 2023 TAC amounts for the BSAI are within the OY range established for the BSAI and do not exceed the ABC for any species or species group. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—FINAL 2022 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2022					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Pollock [4]	BS	1,469,000	1,111,000	1,111,000	999,900	111,100	
	AI	61,264	50,752	19,000	17,100	1,900	
	Bogoslof	113,479	85,109	250	250		
Pacific cod [5]	BS	183,012	153,383	136,466	121,864	14,602	
	AI	27,400	20,600	13,796	12,320	1,476	
Sablefish [6]	Alaska-wide	40,432	34,521	n/a	n/a	n/a	
	BS	n/a	5,264	5,264	4,343	724	197
	AI	n/a	6,463	6,463	5,251	1,091	121
Yellowfin sole	BSAI	377,071	354,014	250,000	223,250	26,750	
Greenland turbot	BSAI	7,687	6,572	6,572	5,586	n/a	
	BS	n/a	5,540	5,540	4,709	593	238
	AI	n/a	1,032	1,032	877		155
Arrowtooth flounder	BSAI	94,445	80,389	20,000	17,000	2,140	860
Kamchatka flounder	BSAI	10,903	9,214	9,214	7,832		1,382
Rock sole [7]	BSAI	214,084	206,896	66,000	58,938	7,062	
Flathead sole [8]	BSAI	77,967	64,288	35,500	31,702	3,799	
Alaska plaice	BSAI	39,305	32,697	29,221	24,838		4,383
Other flatfish [9]	BSAI	22,919	17,189	10,000	8,500		1,500
Pacific ocean perch	BSAI	42,605	35,688	35,385	31,154	n/a	
	BS	n/a	10,352	10,352	8,799		1,553
	EAI	n/a	8,083	8,083	7,218	865	
	CAI	n/a	5,950	5,950	5,313	637	
	WAI	n/a	11,303	11,000	9,823	1,177	
Northern rockfish	BSAI	23,420	19,217	17,000	14,450		2,550
Blackspotted/Rougheye rockfish [10].	BSAI	598	503	503	428		75
	BS/EAI	n/a	326	326	277		49
	CAI/WAI	n/a	177	177	150		27

TABLE 1—FINAL 2022 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in metric tons]

Species	Area	2022					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Shortraker rockfish	BSAI	722	541	541	460		81
Other rockfish [11]	BSAI	1,751	1,313	1,144	972		172
	BS	n/a	919	750	638		113
	AI	n/a	394	394	335		59
Atka mackerel	BSAI	91,870	78,510	66,481	59,368	7,113	
	BS/EAI	n/a	27,260	27,260	24,343	2,917	
	CAI	n/a	16,880	16,880	15,074	1,806	
	WAI	n/a	34,370	22,341	19,951	2,390	
Skates	BSAI	47,790	39,958	30,000	25,500		4,500
Sharks	BSAI	689	517	500	425		75
Octopuses	BSAI	4,769	3,576	700	595		105
Total		2,953,182	2,383,653	1,871,000	1,672,024	181,028	17,948

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea subarea (BS) includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species (Atka mackerel, yellowfin sole, rock sole, flathead sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 15 percent of each TAC is put into a non-specified reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 4).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted/rougheye rockfish, ''other rockfish,'' skates, sharks, and octopuses are not allocated to the CDQ program.

[4] Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4.95 percent), is further allocated by sector for a pollock directed fishery as follows: Inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery.

[5] The BS Pacific cod TAC is set to account for the 11 percent, plus 45 mt, of the BS ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS. The AI Pacific cod TAC is set to account for 39 percent of the AI ABC for the State guideline harvest level in State waters of the AI, except 39 percent of the AI ABC exceeds the State guideline harvest level of 15 million pounds (6,804 mt), in which case the TAC is set to account for the State guideline harvest level of 6,804 mt.

[6] The sablefish OFL and ABC are Alaska-wide and include the Gulf of Alaska.

[7] ''Rock sole'' includes *Lepidopsetta polyxystra* (Northern rock sole) and *Lepidopsetta bilineata* (Southern rock sole).

[8] ''Flathead sole'' includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

[9] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[10] ''Blackspotted/Rougheye rockfish'' includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (rougheye).

[11] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

Note: Regulatory areas and districts are defined at § 679.2 (BSAI = Bering Sea and Aleutian Islands management area, BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian district, CAI = Central Aleutian district, WAI = Western Aleutian district).

TABLE 1A—COMPARISON OF FINAL 2022 AND 2023 WITH PROPOSED 2022 AND 2023 TOTAL ALLOWABLE CATCH IN THE BSAI

[Amounts are in metric tons]

Species	Area [1]	2022 final TAC	2022 proposed TAC	2022 difference from proposed	2022 percentage difference from proposed	2023 final TAC	2023 proposed TAC	2023 difference from proposed	2023 percentage difference from proposed
Pollock	BS	1,111,000	1,400,000	(289,000)	(20.6)	1,289,000	1,400,000	(111,000)	(7.9)
	AI	19,000	19,000			19,000	19,000		
	Bogoslof	250	100	150	150.0	250	100	150	150.0
Pacific cod	BS	136,466	95,053	41,413	43.6	133,459	95,053	38,406	40.4
	AI	13,796	13,796			13,796	13,796		
Sablefish	BS	5,264	4,863	401	8.2	6,529	4,863	1,666	34.3
	AI	6,463	5,061	1,402	27.7	7,786	5,061	2,725	53.8
Yellowfin sole	BSAI	250,000	200,000	50,000	25.0	230,000	200,000	30,000	15.0
Greenland turbot	BS	5,540	5,125	415	8.1	4,825	5,125	(300)	(5.9)
	AI	1,032	900	132	14.7	899	900	(1)	(0.1)
Arrowtooth flounder	BSAI	20,000	15,000	5,000	33.3	20,000	15,000	5,000	33.3
Kamchatka flounder	BSAI	9,214	8,982	232	2.6	9,393	8,982	411	4.6
Rock sole	BSAI	66,000	54,500	11,500	21.1	55,000	54,500	500	0.9
Flathead sole	BSAI	35,500	25,000	10,500	42.0	25,500	25,000	500	2.0
Alaska plaice	BSAI	29,221	22,500	6,721	29.9	29,082	22,500	6,582	29.3
Other flatfish	BSAI	10,000	6,500	3,500	53.8	10,000	6,500	3,500	53.8

TABLE 1A—COMPARISON OF FINAL 2022 AND 2023 WITH PROPOSED 2022 AND 2023 TOTAL ALLOWABLE CATCH IN THE BSAI—Continued

[Amounts are in metric tons]

Species	Area [1]	2022 final TAC	2022 proposed TAC	2022 difference from proposed	2022 percentage difference from proposed	2023 final TAC	2023 proposed TAC	2023 difference from proposed	2023 percentage difference from proposed
Pacific ocean perch	BS	10,352	10,298	54	0.5	9,956	10,298	(342)	(3.3)
	EAI	8,083	8,041	42	0.5	7,774	8,041	(267)	(3.3)
	CAI	5,950	5,919	31	0.5	5,722	5,919	(197)	(3.3)
	WAI	11,000	10,500	500	4.8	10,500	10,500	.....	.....
Northern rockfish	BSAI	17,000	13,000	4,000	30.8	17,000	13,000	4,000	30.8
Blackspotted and Rougheye rockfish.	BS/EAI	326	150	176	117.3	334	150	184	122.7
	CAI/WAI	177	176	1	0.6	183	176	7	4.0
Shortraker rockfish	BSAI	541	225	316	140.4	541	225	316	140.4
Other rockfish	BS	750	300	450	150.0	919	300	619	206.3
	AI	394	394	.....	.....	394	394	.....	.....
Atka mackerel	EAI/BS	27,260	23,880	3,380	14.2	25,000	23,880	1,120	4.7
	CAI	16,880	14,330	2,550	17.8	15,470	14,330	1,140	8.0
	WAI	22,341	19,507	2,834	14.5	20,488	19,507	981	5.0
Skates	BSAI	30,000	16,000	14,000	87.5	30,000	16,000	14,000	87.5
Sharks	BSAI	500	200	300	150.0	500	200	300	150.0
Octopuses	BSAI	700	700	.....	.....	700	700	700	.....
Total	BSAI	1,871,000	2,000,000	(129,000)	(6.5)	2,000,000	2,000,000	.....	.....

[1] Bering Sea subarea (BS), Aleutian Islands subarea (AI), Bering Sea and Aleutian Islands management area (BSAI), Eastern Aleutian District (EAI), Central Aleutian District (CAI), and Western Aleutian District (WAI).

TABLE 2—FINAL 2023 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2023					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Pollock [4]	BS	1,704,000	1,289,000	1,289,000	1,160,100	128,900	.....
	AI	61,379	50,825	19,000	17,100	1,900	.....
	Bogoslof	113,479	85,109	250	250	.....	.....
Pacific cod [5]	BS	180,909	151,709	133,459	119,179	14,280	.....
	AI	27,400	20,600	13,796	12,320	1,476	.....
Sablefish [6]	Alaska-wide	42,520	36,318	n/a	n/a	n/a	.....
	BS	n/a	6,529	6,529	2,775	245	245
	AI	n/a	7,786	7,786	1,655	146	146
Yellowfin sole	BSAI	382,035	358,675	230,000	205,390	24,610	.....
Greenland turbot	BSAI	6,698	5,724	5,724	4,865	n/a	.....
	BS	n/a	4,825	4,825	4,101	516	207
	AI	n/a	899	899	764	.....	135
Arrowtooth flounder	BSAI	97,944	83,389	20,000	17,000	2,140	860
Kamchatka flounder	BSAI	11,115	9,393	9,393	7,984	.....	1,409
Rock sole [7]	BSAI	280,621	271,199	55,000	49,115	5,885	.....
Flathead sole [8]	BSAI	80,034	65,988	25,500	22,772	2,729	.....
Alaska plaice	BSAI	39,685	32,998	29,082	24,720	.....	4,362
Other flatfish [9]	BSAI	22,919	17,189	10,000	8,500	.....	1,500
Pacific ocean perch	BSAI	40,977	34,322	33,952	29,891	n/a	.....
	BS	n/a	9,956	9,956	8,463	.....	1,493
	EAI	n/a	7,774	7,774	6,942	832	.....
	CAI	n/a	5,722	5,722	5,110	612	.....
	WAI	n/a	10,870	10,500	9,377	1,124	.....
Northern rockfish	BSAI	22,594	18,538	17,000	14,450	.....	2,550
Blackspotted/Rougheye rockfish [10].	BSAI	615	517	517	439	.....	78
	BS/EAI	n/a	334	334	284	.....	50
	CAI/WAI	n/a	183	183	156	.....	27
Shortraker rockfish	BSAI	722	541	541	460	.....	81
Other rockfish [11]	BSAI	1,751	1,313	1,313	1,116	.....	197
	BS	n/a	919	919	781	.....	138
	AI	n/a	394	394	335	.....	59
Atka mackerel	BSAI	84,440	71,990	60,958	54,435	6,523	.....
	EAI/BS	n/a	25,000	25,000	22,325	2,675	.....
	CAI	n/a	15,470	15,470	13,815	1,655	.....
	WAI	n/a	31,520	20,488	18,296	2,192	.....
Skates	BSAI	46,475	38,824	30,000	25,500	.....	4,500
Sharks	BSAI	689	517	500	425	.....	75

TABLE 2—FINAL 2023 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in metric tons]

Species	Area	2023					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Octopuses	BSAI	4,769	3,576	700	595		105
Total		3,253,770	2,626,251	2,000,000	1,781,036	191,917	17,943

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea subarea (BS) includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 15 percent of each TAC is put into a non-specified reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 4).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). The 2023 hook-and-line or pot gear portion of the sablefish ITAC and CDQ reserve will not be specified until the final 2023 and 2024 harvest specifications. Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted/rougheye rockfish, ''other rockfish,'' skates, sharks, and octopuses are not allocated to the CDQ program.

[4] Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4.27 percent), is further allocated by sector for a pollock directed fishery as follows: Inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery.

[5] Assuming an increase in the 2023 guideline harvest level based on the actual 2022 harvest, the 2023 BS Pacific cod TAC is set to account for the 12 percent, plus 45 mt, of the BS ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS. The 2023 AI Pacific cod TAC is set to account for 39 percent of the AI ABC for the State guideline harvest level in State waters of the AI, except 39 percent of the AI ABC exceeds the State guideline harvest level of 15 million pounds (6,804 mt), in which case the TAC is set to account for the State guideline harvest level of 6,804 mt.

[6] The sablefish OFL and ABC are Alaska-wide and include the Gulf of Alaska.

[7] ''Rock sole'' includes *Lepidopsetta polyxystra* (Northern rock sole) and *Lepidopsetta bilineata* (Southern rock sole).

[8] ''Flathead sole'' includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

[9] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[10] ''Blackspotted/Rougheye rockfish'' includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (rougheye).

[11] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

Note: Regulatory areas and districts are defined at § 679.2 (BSAI = Bering Sea and Aleutian Islands management area, BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian district, CAI = Central Aleutian district, WAI = Western Aleutian district).

Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch

Section 679.20(b)(1)(i) requires that NMFS reserve 15 percent of the TAC for each target species (except for pollock, hook-and-line and pot gear allocation of sablefish, and Amendment 80 species) in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that NMFS allocate 20 percent of the hook-and-line or pot gear allocation of sablefish to the fixed-gear sablefish CDQ reserve for each subarea. Section 679.20(b)(1)(ii)(D) requires that NMFS allocate 7.5 percent of the trawl gear allocations of sablefish in the BS and AI and 10.7 percent of the BS Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that NMFS allocate 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the respective CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require that 10 percent of the BS pollock TAC be allocated to the pollock CDQ directed fishing allowance (DFA). Sections 679.20(a)(5)(iii)(B)(*2*)(*i*) and 679.31(a) require that 10 percent of the AI pollock TAC be allocated to the pollock CDQ DFA. The entire Bogoslof District pollock TAC is allocated as an ICA pursuant to § 679.20(a)(5)(ii) because the Bogoslof District is closed to directed fishing for pollock by regulation (§ 679.22(a)(7)(B)). With the exception of the hook-and-line or pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 49,500 mt of the BS pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2000 through 2021. During this 22-year period, the pollock incidental catch ranged from a low of 2.2 percent in 2006 to a high of 4.6 percent in 2014, with a 22-year average of 3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS establishes a pollock ICA of 2,500 mt of the AI pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2021. During this 19-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 17 percent in 2014, with a 19-year average of 9 percent.

After subtracting the 10.7 percent CDQ reserve and pursuant to § 679.20(a)(8) and (10), NMFS allocates ICAs of 3,000 mt of flathead sole, 6,000 mt of rock sole, 4,000 mt of yellowfin sole, 10 mt of WAI Pacific ocean perch, 60 mt of CAI Pacific ocean perch, 100 mt of EAI Pacific ocean perch, 20 mt of WAI Atka mackerel, 75 mt of CAI Atka mackerel, and 800 mt of EAI and BS

Atka mackerel. These ICA allowances are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2021.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserves during the year, provided that such apportionments are consistent with § 679.20(a)(3) and do not result in overfishing (see § 679.20(b)(1)(i)). The Regional Administrator has determined that the ITACs specified for certain species listed in Tables 1 and 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b), NMFS is apportioning the amounts shown in Table 3 from the non-specified reserve to increase the ITAC for AI ''other rockfish'' by 15 percent of the ''other rockfish'' TAC in 2022 and 2023.

TABLE 3–FINAL 2022 AND 2023 APPORTIONMENT OF NON-SPECIFIED RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species-area or subarea	2022 ITAC	2022 reserve amount	2022 final TAC	2023 ITAC	2023 reserve amount	2023 final TAC
Other rockfish-Aleutian Islands subarea ..	335	59	394	335	59	394
Total	335	59	394	335	59	394

Allocation of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the BS pollock TAC be apportioned as a DFA, after subtracting 10 percent for the CDQ program and 4.95 percent in 2022 and 4.27 percent in 2023 for the ICA, as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (CP) sector, and 10 percent to the mothership sector. In the BS, 45 percent of the DFA is allocated to the A season (January 20–June 10), and 55 percent of the DFA is allocated to the B season (June 10–November 1) (§§ 679.20(a)(5)(i)(B)(*1*) and 679.23(e)(2)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock TAC remaining in the AI after subtracting 1,900 mt for the CDQ DFA (10 percent) and 2,500 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)). In the AI, the total A season apportionment of the TAC (including the AI directed fishery allocation, the CDQ DFA, and the ICA) may equal up to 40 percent of the ABC for AI pollock, and the remainder of the TAC is allocated to the B season (§ 679.20(a)(5)(iii)(B)(*3*)). Tables 4 and 5 list these 2022 and 2023 amounts.

Section 679.20(a)(5)(iii)(B)(*6*) sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541. In Area 543, the A season pollock harvest limit is no more than 5 percent of the AI pollock ABC. In Area 542, the A season pollock harvest limit is no more than 15 percent of the AI pollock ABC. In Area 541, the A season pollock harvest limit is no more than 30 percent of the AI pollock ABC.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding BS pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the CP sector be available for harvest by AFA catcher vessels (CVs) with CP sector endorsements, unless the Regional Administrator receives a cooperative contract that allows for the distribution of harvest among AFA CPs and AFA CVs in a manner agreed to by all members. Second, AFA CPs not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the CP sector. Tables 4 and 5 list the 2022 and 2023 allocations of pollock TAC. Table 20 lists the AFA CP prohibited species sideboard limits, and Tables 21 and 22 list the AFA CV groundfish and prohibited species sideboard limits. The tables for the pollock allocations to the BS inshore pollock cooperatives and open access sector will be posted on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-fisheries-management.*

Tables 4 and 5 also list seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the annual pollock DFA before 12:00 noon, April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA.

TABLE 4—FINAL 2022 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2022 Allocations	2022 A season [1]		2022 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,111,000	n/a	n/a	n/a
CDQ DFA	111,100	49,995	31,108	61,105
ICA [1]	49,500	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	950,400	427,680	266,112	522,720
AFA Inshore	475,200	213,840	133,056	261,360
AFA Catcher/Processors [3]	380,160	171,072	106,445	209,088
Catch by CPs	347,846	156,531	n/a	191,316
Catch by CVs [3]	32,314	14,541	n/a	17,772
Unlisted CP Limit [4]	1,901	855	n/a	1,045
AFA Motherships	95,040	42,768	26,611	52,272
Excessive Harvesting Limit [5]	166,320	n/a	n/a	n/a

TABLE 4—FINAL 2022 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2022 Allocations	2022 A season [1]		2022 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Excessive Processing Limit [6]	285,120	n/a	n/a	n/a
Aleutian Islands subarea ABC	50,752	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,900	n/a	.....
ICA	2,500	1,250	n/a	1,250
Aleut Corporation	14,600	14,600	n/a	.....
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	15,226	n/a	n/a	n/a
542	7,613	n/a	n/a	n/a
543	2,538	n/a	n/a	n/a
Bogoslof District ICA [8]	250	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (4.95 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the Aleutian Islands pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 5—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season [1]		2023 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,289,000	n/a	n/a	n/a
CDQ DFA	128,900	58,005	36,092	70,895
ICA [1]	49,500	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,110,600	499,770	310,968	610,830
AFA Inshore	555,300	249,885	155,484	305,415
AFA Catcher/Processors [3]	444,240	199,908	124,387	244,332
Catch by CPs	406,480	182,916	n/a	223,564
Catch by CVs [3]	37,760	16,992	n/a	20,768
Unlisted CP Limit [4]	2,221	1,000	n/a	1,222
AFA Motherships	111,060	49,977	31,097	61,083
Excessive Harvesting Limit [5]	194,355	n/a	n/a	n/a
Excessive Processing Limit [6]	333,180	n/a	n/a	n/a
Aleutian Islands subarea ABC	50,825	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,900	n/a	.....
ICA	2,500	1,250	n/a	1,250
Aleut Corporation	14,600	14,600	n/a	.....
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	15,248	n/a	n/a	n/a
542	7,624	n/a	n/a	n/a
543	2,541	n/a	n/a	n/a

TABLE 5—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season [1]		2023 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bogoslof District ICA [8]	250	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (4.27 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) through (*iii*), the Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the Aleutian Islands pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, ICAs for the BSAI trawl limited access sector and non-trawl gear sector, and the jig gear allocation (Tables 6 and 7). The percentage of the ITAC for Atka mackerel allocated to the Amendment 80 and BSAI trawl limited access sectors is listed in Table 33 to 50 CFR part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the EAI and the BS Atka mackerel TAC may be allocated to vessels using jig gear. The percent of this allocation is recommended annually by the Council based on several criteria, including, among other criteria, the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approves, a 0.5 percent allocation of the Atka mackerel ITAC in the EAI and BS to the jig gear sector in 2022 and 2023.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through December 31 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to CDQ Atka mackerel trawl fishing. The ICAs and jig gear allocations are not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(*1*)(*i*) and (*ii*) limits Atka mackerel catch within waters 0 nmi to 20 nmi of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located west of 178° W longitude to no more than 60 percent of the annual TACs in Areas 542 and 543, and equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3). Section 679.20(a)(8)(ii)(C)(*2*) requires that the annual TAC in Area 543 will be no more than 65 percent of the ABC in Area 543. Section 679.20(a)(8)(ii)(D) requires that any unharvested Atka mackerel A season allowance that is added to the B season be prohibited from being harvested within waters 0 nmi to 20 nmi of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located in Areas 541, 542, and 543.

Tables 6 and 7 list these 2022 and 2023 Atka mackerel seasonal and area allowances, and the sector allocations. One Amendment 80 cooperative has formed for the 2022 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2022. The 2023 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022.

TABLE 6—FINAL 2022 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2022 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	27,260	16,880	22,341
CDQ reserve	Total	2,917	1,806	2,390
	A	1,458	903	1,195
	Critical Habitat	n/a	542	717

TABLE 6—FINAL 2022 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2022 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District [5]	Western Aleutian District
	B	1,458	903	1,195
	Critical Habitat	n/a	542	717
Non-CDQ TAC	n/a	24,343	15,074	19,951
ICA	Total	800	75	20
Jig [6]	Total	118		
BSAI trawl limited access	Total	2,343	1,500	
	A	1,171	750	
	Critical Habitat	n/a	450	
	B	1,171	750	
	Critical Habitat	n/a	450	
Amendment 80 sector	Total	21,083	13,499	19,931
	A	10,541	6,749	9,965
	Critical Habitat	n/a	4,050	5,979
	B	10,541	6,749	9,965
	Critical Habitat	n/a	4,050	5,979

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian Islands District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2022 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 7—FINAL 2023 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATION OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2023 allocation by area		
		Eastern Aleutian District/Bering Sea [5]	Central Aleutian District [5]	Western Aleutian District [5]
TAC	n/a	25,000	15,470	20,488
CDQ reserve	Total	2,675	1,655	2,192
	A	1,338	828	1,096
	Critical Habitat	n/a	497	658
	B	1,338	828	1,096
	Critical Habitat	n/a	497	658
non-CDQ TAC	n/a	22,325	13,815	18,296
ICA	Total	800	75	20
Jig [7]	Total	108		
BSAI trawl limited access	Total	2,142	1,374	
	A	1,071	687	
	Critical Habitat	n/a	412	
	B	1,071	687	
	Critical Habitat	n/a	412	
Amendment 80 sectors [7]	Total	19,276	12,366	18,276
	A	9,638	6,183	9,138
	Critical Habitat	n/a	3,710	5,483
	B	9,638	6,183	9,138
	Critical Habitat	n/a	3,710	5,483

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian Islands District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2023 at 0.5 percent. The jig gear allocation is not apportioned by season.

[7] The 2023 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the Pacific Cod TAC

The Council separated BSAI subarea OFLs, ABCs, and TACs for Pacific cod in 2014 (79 FR 12108, March 4, 2014). Section 679.20(b)(1)(ii)(C) allocates 10.7 percent of the BS TAC and the AI TAC to the CDQ program. After CDQ allocations have been deducted from the respective BS and AI Pacific cod TACs, the remaining BSAI Pacific cod TACs are combined for calculating further BSAI Pacific cod sector allocations. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will prohibit non-CDQ directed fishing for Pacific cod in that subarea as provided in § 679.20(d)(1)(iii).

Sections 679.20(a)(7)(i) and (ii) allocate to the non-CDQ sectors the Pacific cod TAC in the combined BSAI, after subtracting 10.7 percent for the CDQ program, as follows: 1.4 percent to vessels using jig gear; 2.0 percent to hook-and-line or pot CVs less than 60 ft (18.3 m) length overall (LOA); 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA; 48.7 percent to hook-and-line CPs; 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA; 1.5 percent to pot CPs; 2.3 percent to AFA trawl CPs; 13.4 percent to Amendment 80 sector; and 22.1 percent to trawl CVs. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2022 and 2023, the Regional Administrator establishes an ICA of 400 mt based on anticipated incidental catch by these sectors in other fisheries.

The ITAC allocation of Pacific cod to the Amendment 80 sector is established in Table 33 to 50 CFR part 679 and § 679.91. One Amendment 80 cooperative has formed for the 2022 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2022. The 2023 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022.

The sector allocations of Pacific cod are apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7)(i)(B), 679.20(a)(7)(iv)(A), and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a Pacific cod seasonal allowance for any sector, except the jig sector, will become available at the beginning of that sector's next seasonal allowance.

Section 679.20(a)(7)(vii) requires that the Regional Administrator establish an Area 543 Pacific cod harvest limit based on Pacific cod abundance in Area 543 as determined by the annual stock assessment process. Based on the 2021 stock assessment, the Regional Administrator determined for 2022 and 2023 the estimated amount of Pacific cod abundance in Area 543 is 15.7 percent of the total AI abundance. To calculate the Area 543 Pacific cod harvest limit, NMFS first subtracts the State GHL Pacific cod amount from the AI Pacific cod ABC. Then NMFS determines the harvest limit in Area 543 by multiplying the percentage of Pacific cod estimated in Area 543 (15.7 percent) by the remaining ABC for AI Pacific cod. Based on these calculations, the Area 543 harvest limit is 2,166 mt for 2022 and 2023.

On March 21, 2019, the final rule adopting Amendment 113 to the FMP (81 FR 84434, November 23, 2016) was vacated by the U.S. District Court for the District of Columbia (*Groundfish Forum* v. *Ross,* No. 16–2495 (D.D.C. March 21, 2019)), and the corresponding regulations implementing Amendment 113 are no longer in effect. Therefore, this final rule is not specifying amounts for the AI Pacific Cod Catcher Vessel Harvest Set-Aside Program (see § 679.20(a)(7)(viii)).

Table 8 and Table 9 list the CDQ and non-CDQ seasonal allowances by gear, as well as the non-CDQ sector allocations, based on the final 2022 and 2023 Pacific cod TACs.

TABLE 8—FINAL 2022 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2022 share of total	2022 share of sector total	2022 seasonal apportionment	
				Season	Amount
BS TAC	n/a	136,466	n/a	n/a	n/a
BS CDQ	n/a	14,602	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	121,864	n/a	n/a	n/a
AI TAC	n/a	13,796	n/a	n/a	n/a
AI CDQ	n/a	1,476	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	12,320	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,166	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100	134,184	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	81,584	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	81,184	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	65,027	Jan 1–Jun 10	33,164
				Jun 10–Dec 31	31,863
Hook-and-line catcher vessel ≥60 ft LOA.	0.2	n/a	267	Jan 1–Jun 10	136
				Jun 10–Dec 31	131

TABLE 8—FINAL 2022 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Sector	Percent	2022 share of total	2022 share of sector total	2022 seasonal apportionment	
				Season	Amount
Pot catcher/processor	1.5	n/a	2,003	Jan 1–Jun 10	1,021
				Sept 1–Dec 31	981
Pot catcher vessel ≥60 ft LOA	8.4	n/a	11,216	Jan 1–Jun 10	5,720
				Sept 1–Dec 31	5,496
Catcher vessel <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,671	n/a	n/a
Trawl catcher vessel	22.1	29,655	n/a	Jan 20–Apr 1	21,944
				Apr 1–Jun 10	3,262
				Jun 10–Nov 1	4,448
AFA trawl catcher/processor	2.3	3,086	n/a	Jan 20–Apr 1	2,315
				Apr 1–Jun 10	772
				Jun 10–Nov 1	
Amendment 80	13.4	17,981	n/a	Jan 20–Apr 1	13,485
				Apr 1–Jun 10	4,495
				Jun 10–Dec 31	
Jig	1.4	1,879	n/a	Jan 1–Apr 30	1,127
				Apr 30–Aug 31	376
				Aug 31–Dec 31	376

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of the reserves for the CDQ program. If the TAC for Pacific cod in either the AI or BS is or will be reached, then directed fishing for non-CDQ Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2022 based on anticipated incidental catch by these sectors in other fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 9—FINAL 2023 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2023 share total	2023 share of sector total	2023 seasonal apportionment	
				Season	Amount
BS TAC	n/a	133,459	n/a	n/a	n/a
BS CDQ	n/a	14,280	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	119,179	n/a	n/a	n/a
AI TAC	n/a	13,796	n/a	n/a	n/a
AI CDQ	n/a	1,476	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	12,320	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,166	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	n/a	131,499	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	79,951	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	79,551	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	63,719	Jan 1–Jun 10	32,497
				Jun 10–Dec 31	31,223
Hook-and-line catcher vessel ≥60 ft LOA.	0.2	n/a	262	Jan 1–Jun 10	133
				Jun 10–Dec 31	128
Pot catcher/processor	1.5	n/a	1,963	Jan 1–Jun 10	1,001
				Sept 1–Dec 31	962
Pot catcher vessel ≥60 ft LOA	8.4	n/a	10,991	Jan 1–Jun 10	5,605
				Sept 1–Dec 31	5,385
Catcher vessel <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,617	n/a	n/a
Trawl catcher vessel	22.1	29,061	n/a	Jan 20–Apr 1	21,505
				Apr 1–Jun 10	3,197
				Jun 10–Nov 1	4,359
AFA trawl catcher/processor	2.3	3,024	n/a	Jan 20–Apr 1	2,268
				Apr 1–Jun 10	756
				Jun 10–Nov 1	
Amendment 80	13.4	17,621	n/a	Jan 20–Apr 1	13,216
				Apr 1–Jun 10	4,405
				Jun 10–Dec 31	

TABLE 9—FINAL 2023 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Sector	Percent	2023 share total	2023 share of sector total	2023 seasonal apportionment	
				Season	Amount
Jig	1.4	1,841	n/a	Jan 1–Apr 30	1,105
				Apr 30–Aug 31	368
				Aug 31–Dec 31	368

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of the reserves for the CDQ program. If the TAC for Pacific cod in either the AI or BS is or will be reached, then directed fishing for non-CDQ Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2023 based on anticipated incidental catch by these sectors in other fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require allocation of the sablefish TAC for the BS and AI subareas between the trawl gear and hook-and-line or pot gear sectors. Gear allocations of the sablefish TAC for the BS are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations of the TAC for the AI are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires that NMFS apportions 20 percent of the hook-and-line or pot gear allocation of sablefish TAC to the CDQ reserve for each subarea. Also, § 679.20(b)(1)(ii)(D)(*1*) requires that in the BS and AI 7.5 percent of the trawl gear allocation of sablefish TAC from the non-specified reserve, established under § 679.20(b)(1)(i), be assigned to the CDQ reserve.

The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear or pot gear sablefish Individual Fishing Quota (IFQ) fisheries are limited to the 2022 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 10 lists the 2022 and 2023 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 10—FINAL 2022 AND 2023 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2022 Share of TAC	2022 ITAC	2022 CDQ reserve	2023 Share of TAC	2023 ITAC	2023 CDQ reserve
Bering Sea:							
Trawl [1]	50	2,632	2,237	197	3,265	2,775	245
Hook-and-line/pot gear [2]	50	2,632	2,106	526	n/a	n/a	n/a
Total	100	5,264	4,343	724	3,265	2,775	245
Aleutian Islands:							
Trawl [1]	25	1,616	1,373	121	1,947	1,655	146
Hook-and-line/pot gear [2]	75	4,847	3,878	969	n/a	n/a	n/a
Total	100	6,463	5,251	1,091	1,947	1,655	146

[1] For the sablefish TAC allocated to vessels using trawl gear, 15 percent of TAC is apportioned to the non-specified reserve (§ 679.20(b)(1)(i)). The ITAC for vessels using trawl gear is the remainder of the TAC after subtracting this reserve. In the BS and AI, 7.5 percent of the trawl gear allocation of the TAC is assigned from the non-specified reserve to the CDQ reserve (§ 679.20(b)(1)(ii)(D)(1)).

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC for the BS and AI is reserved for use by CDQ participants (§ 679.20(b)(1)(ii)(B)). The ITAC for vessels using hook-and-line or pot gear is the remainder of the TAC after subtracting the CDQ reserve for each subarea. The Council recommended that specifications for the hook-and-line or pot gear sablefish IFQ fisheries be limited to one year.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole ITACs between the Amendment 80 sector and the BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserves and ICAs for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocations of the ITACs for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector are established in accordance with Tables 33 and 34 to 50 CFR part 679 and § 679.91.

One Amendment 80 cooperative has formed for the 2022 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2022. The 2023 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in

the program by November 1, 2022. Tables 11 and 12 list the 2022 and 2023 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 11—FINAL 2022 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	8,083	5,950	11,000	35,500	66,000	250,000
CDQ	865	637	1,177	3,799	7,062	26,750
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	712	525	196	.....	.....	52,642
Amendment 80	6,406	4,728	9,617	28,702	52,938	166,608

Note: Sector apportionments may not total precisely due to rounding.

TABLE 12—FINAL 2023 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	7,774	5,722	10,500	25,500	55,000	230,000
CDQ	832	612	1,124	2,729	5,885	24,610
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	684	505	187	.....	.....	45,498
Amendment 80 [1]	6,158	4,545	9,179	19,772	43,115	155,892

[1] The 2023 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022.

Note: Sector apportionments may not total precisely due to rounding.

Section 679.2 defines the ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between the annual ABC and TAC for each species. Section 679.20(b)(1)(iii) establishes ABC reserves for flathead sole, rock sole, and yellowfin sole. The ABC surpluses and the ABC reserves are necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and the Amendment 80 cooperatives from fully harvesting their allocations and to improve the likelihood of achieving and maintaining, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. NMFS, after consultation with the Council, may set the ABC reserve at or below the ABC surplus for each species, thus maintaining the TAC below ABC limits. An amount equal to 10.7 percent of the ABC reserves will be allocated as CDQ ABC reserves for flathead sole, rock sole, and yellowfin sole. Section 679.31(b)(4) establishes the annual allocations of CDQ ABC reserves among the CDQ groups. The Amendment 80 ABC reserves are the ABC reserves minus the CDQ ABC reserves. Section 679.91(i)(2) establishes each Amendment 80 cooperative ABC reserve to be the ratio of each cooperatives' quota share units and the total Amendment 80 quota share units, multiplied by the Amendment 80 ABC reserve for each respective species. Table 13 lists the 2022 and 2023 ABC surplus and ABC reserves for BSAI flathead sole, rock sole, and yellowfin sole.

TABLE 13—FINAL 2022 AND 2023 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2022 Flathead sole	2022 Rock sole	2022 Yellowfin sole	2023 [1] Flathead sole	2023 [1] Rock sole	2023 [1] Yellowfin sole
ABC	64,288	206,896	354,014	65,988	271,199	358,675
TAC	35,500	66,000	250,000	25,500	55,000	230,000
ABC surplus	28,788	140,896	104,014	40,488	216,199	128,675
ABC reserve	28,788	140,896	104,014	40,488	216,199	128,675
CDQ ABC reserve	3,080	15,076	11,129	4,332	23,133	13,768

TABLE 13—FINAL 2022 AND 2023 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE—Continued

[Amounts are in metric tons]

Sector	2022 Flathead sole	2022 Rock sole	2022 Yellowfin sole	2023 [1] Flathead sole	2023 [1] Rock sole	2023 [1] Yellowfin sole
Amendment 80 ABC reserve	25,708	125,820	92,885	36,156	193,066	114,907

[1] The 2023 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022.

PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21, at paragraphs (b), (e), (f), and (g), sets forth the BSAI PSC limits. Pursuant to § 679.21(b)(1), the annual BSAI halibut PSC limits total 3,515 mt. Section 679.21(b)(1) allocates 315 mt of the halibut PSC limit as the PSQ reserve for use by the groundfish CDQ program, 1,745 mt of the halibut PSC limit for the Amendment 80 sector, 745 mt of the halibut PSC limit for the BSAI trawl limited access sector, and 710 mt of the halibut PSC limit for the BSAI non-trawl sector.

Section 679.21, at (b)(1)(iii)(A) and (B), authorizes apportionment of the BSAI non-trawl halibut PSC limit into PSC allowances among six fishery categories in Table 17, and § 679.21, at (b)(1)(ii)(A) and (B), (e)(3)(i)(B), and (e)(3)(iv), requires apportionment of the trawl PSC limits in Tables 15 and 16 into PSC allowances among seven fishery categories.

Pursuant to Section 3.6 of the FMP, the Council recommends, and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consultation with the Council, NMFS exempts the pot gear fishery, the jig gear fishery, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1) The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires that legal-size halibut be retained by vessels using fixed gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)).

The 2021 total groundfish catch for the pot gear fishery in the BSAI was 35,409 mt, with an associated halibut bycatch mortality of 7 mt. The 2021 jig gear fishery harvested about 20 mt of groundfish. Most vessels in the jig gear fleet are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. As mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Under § 679.21(f)(2), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on past bycatch performance, on whether Chinook salmon bycatch incentive plan agreements (IPAs) are formed and approved by NMFS, and on whether NMFS determines it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. The State of Alaska provides to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), and if it is not a low Chinook salmon abundance year, then NMFS will allocate a portion of the 60,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if it is not a low abundance year, then NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(C). If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), in a low abundance year, then NMFS will allocate a portion of the 45,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if in a low abundance year, then NMFS will allocate a portion of the 33,318 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(D).

NMFS has determined that 2021 was a low Chinook salmon abundance year, based on the State's estimate that Chinook salmon abundance in western Alaska is less than 250,000 Chinook salmon. Therefore, in 2022, the Chinook salmon PSC limit is 45,000 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(B). The AFA sector Chinook salmon PSC limits are also seasonally apportioned with 70 percent for the A season pollock fishery, and 30 percent for the B season pollock fishery (§§ 679.21(f)(3)(i) and 679.23(e)(2)). In 2022, the Chinook salmon bycatch performance standard under § 679.21(f)(6) is 33,318 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(D).

NMFS publishes the approved IPAs, allocations, and reports at *https://alaskafisheries.noaa.gov/sustainable fisheries/bycatch/default.htm.*

Section 679.21(g)(2)(i) specifies 700 fish as the 2022 and 2023 Chinook salmon PSC limit for the AI pollock fishery. Section 679.21(g)(2)(ii) allocates 7.5 percent, or 53 Chinook salmon, as the AI PSQ reserve for the CDQ program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(f)(14)(i) specifies 42,000 fish as the 2022 and 2023 non-Chinook salmon PSC limit for vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area (CVOA). Section 679.21(f)(14)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, in the CVOA as the PSQ reserve for the CDQ program, and allocates the remaining 37,506 non-Chinook salmon in the CVOA to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Section 679.21(e)(3)(i)(A)(*1*) allocates 10.7

percent from each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ program.

Based on the most recent (2021) survey data, the red king crab mature female abundance is estimated at 6.432 million red king crabs, and the effective spawning biomass is estimated at 25.120 million lbs (9,463 mt). Based on the criteria set out at § 679.21(e)(1)(i), the 2022 and 2023 PSC limit of red king crab in Zone 1 for trawl gear is 32,000 animals. This limit derives from the mature female abundance estimate below 8.4 million mature red king crab.

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS) if the State has established a GHL fishery for red king crab in the Bristol Bay area in the previous year. The State's Department of Fish and Game (ADF&G) and NMFS have reviewed the final 2021 NMFS trawl survey data for the Bristol Bay red king crab stock. The stock is estimated to be below the regulatory threshold for opening a fishery. Therefore, the State did not establish a GHL for the Bristol Bay red king crab fishery, and the fishery will remain closed for the 2021/2022 crab season. For this reason, NMFS closed directed fishing for vessels using non-pelagic trawl gear in the RKCSS for 2022 (87 FR 2558, January 18, 2022). And, NMFS and the Council will not specify an amount of the red king crab bycatch limit, annually established under § 679.21(e)(1)(i), for the RKCSS. NMFS and the Council will assess the RKCSS closure for 2023 based on whether the State's ADF&G establishes a GHL for the 2022/2023 red king crab fishery in the Bristol Bay area.

Based on the most recent (2021) survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 385 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2022 and 2023 *C. bairdi* crab PSC limit for trawl gear is 830,000 animals in Zone 1, and 2,520,000 animals in Zone 2. The limit in Zone 1 is based on the abundance of *C. bairdi* estimated at 385 million animals, which is greater than 270 million animals but less than 400 million animals. The limit in Zone 2 is based on the abundance of *C. bairdi* estimated at 385 million animals, which is greater than 290 million animals but less than 400 million animals.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for trawl gear for snow crab (*Chionoecetes opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit in the *C. opilio* bycatch limitation zone (COBLZ) is set at 0.1133 percent of the BS abundance index minus 150,000 crabs, unless the minimum or maximum PSC limit applies. Based on the most recent (2021) survey estimate of 1.42 billion animals, the calculated *C. opilio* crab PSC limit is 1,608,860 animals. Because 0.1133 percent multiplied by the total abundance is less than 4.5 million, the minimum PSC limit applies and the PSC limit will be 4.350 million animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern BS herring biomass. The best estimate of 2022 and 2023 herring biomass is 381,876 mt. This amount was developed by the Alaska Department of Fish and Game based on biomass for spawning aggregations. Therefore, the herring PSC limit for 2022 and 2023 is 3,819 mt for all trawl gear as listed in Tables 14 and 15.

Section 679.21(e)(3)(i)(A) requires that PSQ reserves be subtracted from the total trawl gear crab PSC limits. The crab and halibut PSC limits apportioned to the Amendment 80 and BSAI trawl limited access sectors are listed in Table 35 to 50 CFR part 679. The resulting 2022 and 2023 allocations of PSC limit to CDQ PSQ reserves, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in Table 14. Pursuant to §§ 679.21(b)(1)(i), 679.21(e)(3)(vi), and 679.91(d) through (f), crab and halibut trawl PSC limits assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as cooperative quota. Crab and halibut PSC cooperative quota assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. In 2022, there are no vessels in the Amendment 80 limited access sector and there is one Amendment 80 cooperative. The 2023 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2022. Section 679.21(e)(3)(i)(B) requires that NMFS, after consultation with the Council, apportion each trawl PSC limit for crab and herring not assigned to CDQ PSQ reserves or Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories in § 679.21(e)(3)(iv).

Sections 679.21(b)(2) and (e)(5) authorize NMFS, after consulting with the Council, to establish seasonal apportionments of halibut and crab PSC amounts for the BSAI trawl limited access and non-trawl sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species relative to prohibited species distribution, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species, (4) expected variations in bycatch rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected start of fishing effort, and (7) economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry. Based on this criteria, the Council recommended and NMFS approves the seasonal PSC apportionments in Tables 16 and 17 to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC.

TABLE 14—FINAL 2022 AND 2023 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area and zone [1]	Total PSC	Non-trawl PSC	CDQ PSQ reserve [2]	Trawl PSC remaining after CDQ PSQ	Amendment 80 sector [3]	BSAI trawl limited access sector	BSAI PSC limits not allocated [3]
Halibut mortality (mt) BSAI	3,515	710	315	n/a	1,745	745	.....
Herring (mt) BSAI	3,819	n/a	n/a	n/a	n/a	n/a	.....
Red king crab (animals) Zone 1	32,000	n/a	3,424	28,576	14,282	8,739	5,555
C. opilio (animals) COBLZ	4,350,000	n/a	465,450	3,884,550	1,909,256	1,248,494	726,799
C. bairdi crab (animals) Zone 1	830,000	n/a	88,810	741,190	312,115	348,285	80,790

TABLE 14—FINAL 2022 AND 2023 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS—Continued

PSC species and area and zone [1]	Total PSC	Non-trawl PSC	CDQ PSQ reserve [2]	Trawl PSC remaining after CDQ PSQ	Amendment 80 sector [3]	BSAI trawl limited access sector	BSAI PSC limits not allocated [3]
C. bairdi crab (animals) Zone 2	2,520,000	n/a	269,640	2,250,360	532,660	1,053,394	664,306

[1] Refer to § 679.2 for definitions of areas and zones.
[2] The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.
[3] The Amendment 80 program reduced apportionment of the trawl PSC limits for crab below the total PSC limit. These reductions are not apportioned to other gear types or sectors.

TABLE 15—FINAL 2022 AND 2023 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) zone 1
Yellowfin sole	222	n/a
Rock sole/flathead sole/Alaska plaice/other flatfish [1]	110	n/a
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish	11	n/a
Rockfish	11	n/a
Pacific cod	20	n/a
Midwater trawl pollock	3,400	n/a
Pollock/Atka mackerel/other species [2] [3]	45	n/a
2022 Red king crab savings subarea non-pelagic trawl gear [4]	n/a	
2023 Red king crab savings subarea non-pelagic trawl gear [5]	n/a	8,000
Total trawl PSC	3,819	32,000

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[2] Pollock other than midwater trawl pollock, Atka mackerel, and "other species" fishery category.
[3] "Other species" for PSC monitoring includes skates, sharks, and octopuses.
[4] Section 679.21(e)(3)(ii)(B) establishes criteria under which an annual red king crab bycatch limit must be specified for the Red King Crab Savings Subarea (RKCSS) if the State has established a GHL fishery for red king crab in the Bristol Bay area in the previous year. Based on the final 2021 NMFS trawl survey data for the Bristol Bay red king crab stock, the State of Alaska closed the Bristol Bay red king crab fishery for the 2021/2022 crab season. NMFS and the Council will not specify the red king crab bycatch limit for the RKCSS in 2022, and pursuant to § 679.21(e)(3)(ii)(B)(*1*) directed fishing for groundfish is prohibited for vessels using non-pelagic trawl gear in the RKCSS for 2022.
[5] If the Bristol Bay red king crab fishery remains closed in the 2022/2023 crab season, the RKCSS specification will be zero. If the Bristol Bay red king crab fishery is open in the 2022/2023 crab season, NMFS, after consultation with the Council, will specify an annual red king crab bycatch limit for the RKCSS, which is limited by regulation to up to 25 percent of the red king crab PSC allowance (§ 679.21(e)(3)(ii)(B)(*2*)).
Note: Species allowances may not total precisely due to rounding.

TABLE 16—FINAL 2022 AND 2023 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access fisheries	Prohibited species and area and zone [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	265	7,700	1,192,179	293,234	1,005,879
Rock sole/flathead sole/Alaska plaice/other flatfish [2]					
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish					
Rockfish April 15–December 31	5		1,006		849
Pacific cod	300	975	50,281	50,816	42,424
Pollock/Atka mackerel/other species [3]	175	65	5,028	4,235	4,243
Total BSAI trawl limited access PSC	745	8,739	1,248,494	348,285	1,053,394

[1] Refer to § 679.2 for definitions of areas and zones.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[3] "Other species" for PSC monitoring includes skates, sharks, and octopuses.
Note: Seasonal or sector allowances may not total precisely due to rounding.

TABLE 17—FINAL 2022 AND 2023 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIESHALIBUT MORTALITY (MT) BSAI

Non-trawl fisheries	Seasons	Catcher/ processor	Catcher vessel	All non-trawl
Pacific cod	Total Pacific cod	648	13	661
	January 1–June 10	388	9	n/a
	June 10–August 15	162	2	n/a
	August 15–December 31	98	2	n/a
Non-Pacific cod non-trawl—Total	May 1–December 31	n/a	n/a	49
Groundfish pot and jig	n/a	n/a	n/a	Exempt
Sablefish hook-and-line	n/a	n/a	n/a	Exempt
Total for all non-trawl PSC	n/a	n/a	n/a	710

Note: Seasonal or sector allowances may not total precisely due to rounding.

Estimates of Halibut Biomass and Stock Condition

The International Pacific Halibut Commission (IPHC) annually assesses the abundance and potential yield of the Pacific halibut stock using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2021 Pacific halibut stock assessment (December 2021), available on the IPHC website at *www.iphc.int.* The IPHC considered the 2021 Pacific halibut stock assessment at its January 2022 annual meeting when it set the 2022 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers' estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, SSC, and the Council. A summary of the revised methodology is included in the BSAI proposed 2017 and 2018 harvest specifications (81 FR 87863, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling, which could provide more recent and accurate data and which could improve the accuracy of estimation and progress on methodology. The methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the December 2021 meeting, the SSC, AP, and the Council concurred with the revised DMR estimation methodology, and NMFS adopts for 2022 and 2023 the DMRs calculated under the revised methodology, which uses an updated 2-year reference period. The final 2022 and 2023 DMRs in this rule are unchanged from the DMRs in the proposed 2022 and 2023 harvest specifications (86 FR 68608, December 3, 2021). Table 18 lists these final 2022 and 2023 DMRs.

TABLE 18—2022 AND 2023 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI

Gear	Sector	Halibut discard mortality rate (percent)
Pelagic trawl	All	100
Non-pelagic trawl	Mothership and catcher/processor	84
Non-pelagic trawl	Catcher vessel	62
Hook-and-line	Catcher/processor	10
Hook-and-line	Catcher vessel	10
Pot	All	33

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a DFA for a species or species group if the Regional Administrator determines that any allocation or apportionment of a target species has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS

will prohibit directed fishing for that species or species group in the specified subarea, regulatory area, or district (see § 679.20(d)(1)(iii)). Similarly, pursuant to § 679.21(b)(4) and (e)(7), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab, or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species or species group in that fishery category in the area specified by regulation for the remainder of the season or fishing year.

Based on historic catch patterns and anticipated fishing activity, the Regional Administrator has determined that the groundfish allocation amounts in Table 19 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2022 and 2023 fishing years. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species and species groups in Table 19 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these sectors and species or species groups in the specified areas effective at 1200 hours, A.l.t., March 2, 2022, through 2400 hours, A.l.t., December 31, 2023. Also, for the BSAI trawl limited access sector, bycatch allowances of halibut, red king crab, *C. bairdi* crab, and *C. opilio* crab listed in Table 19 are insufficient to support directed fisheries. Therefore, in accordance with §§ 679.21(b)(4)(i) and (e)(7), NMFS is prohibiting directed fishing for these sectors, species, and fishery categories in the specified areas effective at 1200 hours, A.l.t., March 2, 2022, through 2400 hours, A.l.t., December 31, 2023.

TABLE 19—2022 AND 2023 DIRECTED FISHING CLOSURES [1]

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals.]

Area	Sector	Species	2022 Incidental catch allowance	2023 Incidental catch allowance
Bogoslof District	All	Pollock	250	250
Aleutian Islands subarea	All	Greenland Turbot	877	764
Aleutian Islands subarea	All	ICA pollock	2,500	2,500
		"Other rockfish" [2]	394	394
Aleutian Islands subarea	Trawl non-CDQ	Sablefish	1,373	1,655
Eastern Aleutian District/Bering Sea	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Atka mackerel	800	800
Eastern Aleutian District/Bering Sea	All	Blackspotted/Rougheye rockfish	277	284
Eastern Aleutian District	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Pacific ocean perch	100	100
Central Aleutian District	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Atka mackerel	75	75
		ICA Pacific ocean perch	60	60
Western Aleutian District	Non-amendment 80, CDQ and BSAI trawl limited access.	ICA Atka mackerel	20	20
		ICA Pacific ocean perch	10	10
Western and Central Aleutian Districts.	All	Blackspotted/Rougheye rockfish	150	156
Bering Sea subarea	Trawl non-CDQ	Sablefish	2,237	2,775
Bering Sea subarea	All	Pacific ocean perch	8,799	8,463
		"Other rockfish" [2]	638	781
		ICA pollock	49,500	49,500
Bering Sea and Aleutian Islands	All	Shortraker rockfish	460	460
		Skates	25,500	25,500
		Sharks	425	425
		Octopuses	595	595
	Hook-and-line and pot gear	ICA Pacific cod	400	400
	Non-amendment 80 and CDQ	ICA flathead sole	3,000	3,000
		ICA rock sole	6,000	6,000
	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA yellowfin sole	4,000	4,000
	BSAI trawl limited access	Rock sole/flathead sole/other flatfish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.		
		Turbot/arrowtooth/Kamchatka/sablefish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.		
		Rockfish—red king crab Zone 1		

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

[2] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

Closures implemented under the final 2021 and 2022 BSAI harvest specifications for groundfish (86 FR 11449, February 25, 2021) remain effective under authority of these final 2022 and 2023 harvest specifications and until the date specified in those closure notices. Closures are posted at the following website under the Alaska filter for Management Area: *https://www.fisheries.noaa.gov/rules-and-announcements/bulletins.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found at 50 CFR part 679.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA CPs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as sideboard limits on catch. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CPs from directed fishing for groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and Table 54 to 50 CFR part 679). Section 679.64(a)(1)(v) exempts AFA CPs from a yellowfin sole sideboard limit because the final 2022 and 2023 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to 50 CFR part 679 establish a formula for calculating PSC sideboard limits for halibut and crab caught by listed AFA CPs. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). PSC species listed in Table 20 that are caught by listed AFA CPs participating in any groundfish fishery other than pollock will accrue against the final 2022 and 2023 PSC sideboard limits for the listed AFA CPs. Section 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA CPs once a final 2022 or 2023 PSC sideboard limit listed in Table 20 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by listed AFA CPs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories, according to § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 20—FINAL 2022 AND 2023 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species and area [1]	Ratio of PSC catch to total PSC	2022 and 2023 PSC available to trawl vessels after subtraction of PSQ [2]	2022 and 2023 AFA catcher/processor sideboard limit [2]
Halibut mortality BSAI	n/a	n/a	286
Red king crab Zone 1	0.0070	28,576	200
C. opilio (COBLZ)	0.1530	3,884,550	594,336
C. bairdi Zone 1	0.1400	741,190	103,767
C. bairdi Zone 2	0.0500	2,250,360	112,518

[1] Refer to § 679.2 for definitions of areas.
[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the pollock directed fishery. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA C/Vs from directed fishing for a majority of the groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and Table 55 to 50 CFR part 679). Section 679.64(b)(6) exempts AFA CVs from a yellowfin sole sideboard limit because the 2022 and 2023 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt. The remainder of the sideboard limits for non-exempt AFA C/Vs are in Table 21.

Section 679.64(b)(3) and (b)(4) and Tables 40 and 41 to 50 CFR part 679 establish formulas for setting AFA CV groundfish and halibut and crab PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Table 21 lists the final 2022 and 2023 AFA CV groundfish sideboard limits.

TABLE 21—FINAL 2022 AND 2023 BSAI PACIFIC COD SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)

[Amounts are in metric tons]

Fishery by area/gear/season	Ratio of 1997 AFA CV catch to 1997 TAC	2022 Initial TAC	2022 AFA catcher vessel sideboard limits	2023 Initial TAC	2023 AFA catcher vessel sideboard limits
BSAI	n/a	n/a	n/a	n/a	n/a
Trawl gear CV	n/a	n/a	n/a	n/a	n/a
Jan 20–Apr 1	0.8609	21,944	18,892	21,505	18,514
Apr 1–Jun 10	0.8609	3,262	2,808	3,197	2,752
Jun 10–Nov 1	0.8609	4,448	3,829	4,359	3,753

Note: Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2022 and 2023 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 22 that are caught by AFA CVs participating in any groundfish fishery other than pollock will accrue against the 2022 and 2023 PSC sideboard limits for the AFA CVs. Section 679.21, at

(b)(4)(iii), (e)(3)(v), and (e)(7), authorizes NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a final 2022 and 2023 PSC sideboard limit listed in Table 22 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by AFA CVs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories under § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 22—FINAL 2022 AND 2023 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species and area [1]	Target fishery category [2]	AFA catcher vessel PSC sideboard limit ratio	2022 and 2023 PSC limit after subtraction of PSQ reserves [3]	2022 and 2023 AFA catcher vessel PSC sideboard limit [3]
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/Alaska plaice/other flatfish [4]	n/a	n/a	228
	Greenland turbot/arrowtooth/Kamchatka/sablefish	n/a	n/a	
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species [5]	n/a	n/a	5
Red king crab Zone 1	n/a	0.2990	28,576	8,544
C. opilio COBLZ	n/a	0.1680	3,884,550	652,604
C. bairdi Zone 1	n/a	0.3300	741,190	244,593
C. bairdi Zone 2	n/a	0.1860	2,250,360	418,567

[1] Refer to § 679.2 for definitions of areas.
[2] Target trawl fishery categories are defined at § 679.21(b)(1)(ii)(B) and (e)(3)(iv).
[3] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[4] Other flatfish for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[5] ''Other species'' for PSC monitoring includes skates, sharks, and octopuses.

Response to Comments

NMFS received no comments during the public comment period for the proposed BSAI groundfish harvest specifications.

Classification

NMFS has determined that the final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. In January 2022, NMFS prepared a Supplementary Information Report (SIR) for this action to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (SEIS) (40 CFR 1501.11(b); § 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. The preferred alternative is a harvest strategy in which TACs are set at a level within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The latest annual SIR evaluated the need to prepare a SEIS for the 2022 and 2023 groundfish harvest specifications. An SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)). After reviewing the information contained in the SIR and SAFE report, the Regional Administrator has determined that (1) approval of the 2022 and 2023 harvest specifications, which were set according to the preferred harvest strategy in the Final EIS, does not constitute a substantial change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2022 and 2023 harvest specifications will result in environmental, social, and economic impacts within the scope of those analyzed and disclosed in the Final EIS. Therefore, an SEIS is not necessary to implement the 2022 and 2023 harvest specifications.

A final regulatory flexibility analysis (FRFA) was prepared. Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. The following constitutes the FRFA prepared in this final action.

Section 604 of the RFA describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an

estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are included at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 3, 2021 (86 FR 68608). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed action, and included the IRFA in the proposed rule. The comment period closed on January 3, 2022. No comments were received on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State waters. These include entities operating catcher vessels and catcher/processors within the action area and entities receiving direct allocations of groundfish.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $11 million for all its affiliated operations worldwide.

Using the most recent data available (2020), the estimated number of directly regulated small entities includes approximately 155 catcher vessels, 4 catcher/processors, and six CDQ groups. Some of these vessels are members of AFA inshore pollock cooperatives, Gulf of Alaska rockfish cooperatives, or BSAI Crab Rationalization Program cooperatives, and, since under the RFA the aggregate gross receipts of all participating members of the cooperative must meet the ''under $11 million'' threshold, the cooperatives are considered to be large entities within the meaning of the RFA. Thus, the estimate of 155 catcher vessels may be an overstatement of the number of small entities. Average gross revenues in 2020 were $530,000 for small hook-and-line vessels, $1.1 million for small pot vessels, $2.8 million for small trawl vessels, $6.6 million for hook-and-line CPs, and $3.1 million for pot gear CPs.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This action implements the final 2022 and 2023 harvest specifications, apportionments, and prohibited species catch limits for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits for groundfish during the 2022 and 2023 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the final harvest specifications is governed by the Council's harvest strategy for the catch of groundfish in the BSAI. The harvest strategy was previously selected from among five alternatives. Under this preferred alternative harvest strategy, TACs are set within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP; and while the specific TAC numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. This final action implements the preferred alternative harvest strategy previously chosen by the Council to set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and as recommended by the Council. This is the method for determining TACs that has been used in the past.

The final 2022 and 2023 TACs associated with preferred harvest strategy are those recommended by the Council in December 2021. OFLs and ABCs for each species or species group were based on recommendations prepared by the Council's Plan Team, and reviewed by the Council's SSC. The Council's TAC recommendations are consistent with the SSC's OFL and ABC recommendations, and the sum of all TACs remains within the OY for the BSAI consistent with § 679.20(a)(1)(i)(A). Because setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2.0 million mt, TACs for some species or species groups are lower than the ABCs recommended by the Plan Team and the SSC.

The final 2022 and 2023 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The final 2022 and 2023 TACs are based on the best available biological and socioeconomic information. The final 2022 and 2023 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2021 SAFE report, which is the most recent, completed SAFE report. Accounting for the most recent biological information to set the final OFLs, ABCs, and TACs is consistent with the objectives for this action, as well as National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2)) that actions shall be based on the best scientific information available.

Under this action, the ABCs reflect harvest amounts that are less than the specified overfishing levels. The TACs are within the range of ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For some species and species groups in the BSAI, the Council recommended, and NMFS sets, TACs equal to ABCs, which is intended to maximize harvest opportunities in the BSAI. However, NMFS cannot set TACs for all species in the BSAI equal to their ABCs due to the constraining OY limit of 2.0 million mt. For this reason, some final TACs are less than the final ABCs. These specific reductions were reviewed and recommended by the Council's AP, and then reviewed and adopted by the Council for the final 2022 and 2023 TACs.

Based on the best available scientific data, and in consideration of the Council's objectives for this action, there are no significant alternatives that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. This action is economically beneficial to entities operating in the BSAI, including small entities. The action specifies TACs for commercially-valuable species in the

BSAI and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council solicited input from stakeholders, the Council concluded that these final harvest specifications would best accomplish the stated objectives articulated in the preamble for this final rule and in applicable statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Adverse impacts on marine mammals, or endangered or threatened species, resulting from fishing activities conducted under this rule are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the date of effectiveness for this rule because delaying this rule is contrary to the public interest. The Plan Team review of the 2021 SAFE report occurred in November 2021, and based on the 2021 SAFE report the Council considered and recommended the final harvest specifications in December 2021. Accordingly, NMFS's review of the final 2022 and 2023 harvest specifications could not begin until after the December 2021 Council meeting, and after the public had time to comment on the proposed action.

For all fisheries not currently closed because the TACs established under the final 2021 and 2022 harvest specifications (86 FR 11449, February 25, 2021) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period because their TACs could be reached within that period. If implemented immediately, this rule would allow these fisheries to continue fishing because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing.

In addition, immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly pertinent for those species that have lower 2022 ABCs and TACs than those established in the 2021 and 2022 harvest specifications (86 FR 11449, February 25, 2021). If implemented immediately, this rule would ensure that NMFS can properly manage those fisheries for which this rule sets lower 2022 ABCs and TACs, which are based on the most recent biological information on the condition of stocks, rather than managing species under the higher TACs set in the previous year's harvest specifications.

Certain fisheries, such as those for pollock, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sharks, and octopuses, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If the date of effectiveness of this rule were to be delayed 30 days and if a TAC were to be reached during those 30 days, NMFS would be required to close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards, thus undermining the intent of this rule. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the 2022 TACs (set under the 2021 and 2022 harvest specifications) be reached. Determining which fisheries may close is nearly impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before initial season's end could deny the intended economic protection to the non-sideboard limited sectors. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard-limited sectors.

If these final harvest specifications are not effective by March 6, 2022, which is the start of the 2022 Pacific halibut season as specified by the IPHC, the fixed gear sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. Delayed effectiveness of this action would result in confusion for sablefish harvesters and economic harm from the unnecessary discard of sablefish that are caught along with Pacific halibut, as both fixed gear sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of these final 2022 and 2023 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

Finally, immediate effectiveness also would provide the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TAC limits. Therefore, NMFS finds good cause to waive the 30-day delay in the date of effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

This final rule is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2022 and 2023 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2022 and 2023 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. This action directly affects all fishermen who participate in the BSAI fisheries. The specific amounts of OFL, ABC, TAC, and PSC amounts are provided in tables to assist the reader. These tables also are individually available online at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-harvest-specifications*. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: February 24, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–04292 Filed 3–1–22; 8:45 am]

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Proposed Rules

Federal Register
Vol. 87, No. 41
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0007]

RIN 1904–AE63

Energy Conservation Program: Energy Conservation Standards for Electric Motors, 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 electric motors. The meeting will cover the analytical framework, models, and tools used to evaluate potential standards for this equipment; the results of preliminary analyses performed for this equipment; the potential energy conservation standard levels derived from these analyses that may be considered for this equipment should proposed amendments be determined necessary; and any other issues relevant to the evaluation of energy conservation standards for electric motors. Written comments on these subjects from the public are encouraged.

DATES:

Meeting: A webinar will be held on Tuesday, April 5, 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.

Comments: Written comments and information will be accepted on or before, May 2, 2022.

ADDRESSES: To inform interested parties and to facilitate this process, an agenda, a preliminary technical support document, and related briefing materials, are available at: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=6&action=viewlive.*

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–0007, by any of the following methods:

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

2. *Email: ElecMotors2020STD0007@ee.doe.gov.* Include docket number EERE–2020–BT–STD–0007 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 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-0007.* 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. Email: *Appliance StandardsQuestions@ee.doe.gov.*

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

For further information on how to submit a comment, 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 several consumer products and certain

[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).

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) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency of certain types of industrial equipment, including electric motors, the subject of this notice. (42 U.S.C. 6311(1)(A))

The Energy Policy Act of 1992 (''EPACT 1992'') (Pub. L. 102–486 (Oct. 24, 1992)) further amended EPCA by establishing energy conservation standards and test procedures for certain commercial and industrial electric motors that are manufactured alone or as a component of another piece of equipment. In December 2007, Congress enacted the Energy Independence and Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140 (Dec. 19, 2007). Section 313(b)(1) of EISA 2007 updated the energy conservation standards for those electric motors already covered by EPCA and established energy conservation standards for a larger scope of motors not previously covered by standards. (42 U.S.C. 6313(b)(2)) EISA 2007 also revised certain statutory definitions related to electric motors. *See* EISA 2007, sec. 313 (amending statutory definitions related to electric motors at 42 U.S.C. 6311(13))

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 equipment 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. 6316(a); 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 equipment 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. 6316(a); 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. 6316(a); 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. 6316(a); 42 U.S.C. 6295(o)(3)(B))

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 equipment, including electric motors. 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. 6316(a); 42 U.S.C. 6295(o)(2)(A)) 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. 6316(a); 42 U.S.C. 6295(o)(3))

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. For example, the United States has now rejoined the Paris Agreement and will exert leadership in confronting the climate crisis.[3] 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 of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment 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 evaluates the significance of energy savings on a case-by-case basis. DOE has initially determined the energy savings for the TSL proposed in this 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 (or as applicable, water) 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 and water conservation; and

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

(42 U.S.C. 6316(a); 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.

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

[3] See Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
Technological Feasibility	• Energy Use Analysis. • 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. • Markups for Product Price Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• 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 and water 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. • 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. 6316(a); 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. 6316(a); 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. 6316(a); 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 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. 6316(a); 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. 6316(a); 42 U.S.C. 6295(q)(2))

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 equipment at issue and the results of preliminary analyses DOE performed for the equipment.

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

C. Deviation From Appendix A

Under 10 CFR 431.4, the provisions of 10 CFR part 430, subpart C, appendix A (''appendix A''), apply to commercial and industrial equipment regulated by DOE. In accordance with section 3(a) of 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 (after initiating the rulemaking process through an early assessment), 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 the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. DOE issued an early assessment request for information on May 21, 2020 (''May 2020 Early Assessment Review RFI'') in which DOE identified and sought comment on technological or market changes to help determine whether the existing energy conservation standards for electric

motors should be amended. 85 FR 30878. DOE provided a 30-day comment period for the RFI. *Id.* As DOE is intending to rely on substantively the same analytical methods as in the 2014 rulemaking, publication of a framework document would be largely redundant with the published early assessment RFI. As such, DOE is not publishing a framework document.

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 Early Assessment Review RFI on the analysis conducted in support of the last energy conservation standard rulemaking for electric motors. For this preliminary analysis, DOE has relied on many of the same analytical assumptions and approaches as used in the previous rulemaking and has determined that a 60-day comment period in conjunction with the prior 30-day comment period provides sufficient time for interested parties to review the preliminary analysis and develop comments.

II. Background

A. Current Standards

On May 29, 2014, DOE published a final rule adopting new and amended energy conservation standards for electric motors other than fire pump electric motors, consistent with the efficiency levels (''ELs'') specified in Table 12–12 of National Electrical Manufacturers Association (''NEMA'') Standards Publication MG 1–2011, ''Motors and Generators,'' and retained the standards for fire pump motors. 79 FR 30934 (''May 2014 Final Rule''). These standards are set forth in DOE's regulations at 10 CFR 431.25 and are repeated in Table II.1, Table II.2 and Table II.3 (for electric motors starting on June 1, 2016).

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN A, NEMA DESIGN B AND IEC DESIGN N MOTORS (EXCLUDING FIRE PUMP ELECTRIC MOTORS) AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2-Pole		4-Pole		6-Pole		8-Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	77.0	77.0	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	84.0	84.0	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	85.5	85.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	86.5	85.5	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	88.5	86.5	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	89.5	88.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	90.2	89.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	91.0	90.2	92.4	93.0	91.7	91.7	89.5	90.2
20/15	91.0	91.0	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	91.7	91.7	93.6	93.6	93.0	93.0	90.2	91.0
30/22	91.7	91.7	93.6	94.1	93.0	93.6	91.7	91.7
40/30	92.4	92.4	94.1	94.1	94.1	94.1	91.7	91.7
50/37	93.0	93.0	94.5	94.5	94.1	94.1	92.4	92.4
60/45	93.6	93.6	95.0	95.0	94.5	94.5	92.4	93.0
75/55	93.6	93.6	95.4	95.0	94.5	94.5	93.6	94.1
100/75	94.1	93.6	95.4	95.4	95.0	95.0	93.6	94.1
125/90	95.0	94.1	95.4	95.4	95.0	95.0	94.1	94.1
150/110	95.0	94.1	95.8	95.8	95.8	95.4	94.1	94.1
200/150	95.4	95.0	96.2	95.8	95.8	95.4	94.5	94.1
250/186	95.8	95.0	96.2	95.8	95.8	95.8	95.0	95.0
300/224	95.8	95.4	96.2	95.8	95.8	95.8	.....	.....
350/261	95.8	95.4	96.2	95.8	95.8	95.8		
400/298	95.8	95.8	96.2	95.8	.....	.....	.....	.....
450/336	95.8	96.2	96.2	96.2	.....	.....	.....	.....
500/373	95.8	96.2	96.2	96.2	.....	.....	.....	.....

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN C AND IEC DESIGN H MOTORS AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)					
	4-Pole		6-Pole		8-Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	85.5	85.5	82.5	82.5	75.5	75.5
1.5/1.1	86.5	86.5	87.5	86.5	78.5	77.0
2/1.5	86.5	86.5	88.5	87.5	84.0	86.5
3/2.2	89.5	89.5	89.5	88.5	85.5	87.5
5/3.7	89.5	89.5	89.5	89.5	86.5	88.5
7.5/5.5	91.7	91.0	91.0	90.2	86.5	89.5
10/7.5	91.7	91.7	91.0	91.7	89.5	90.2
15/11	92.4	93.0	91.7	91.7	89.5	90.2

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR NEMA DESIGN C AND IEC DESIGN H MOTORS AT 60 HZ—Continued

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)					
	4-Pole		6-Pole		8-Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open
20/15	93.0	93.0	91.7	92.4	90.2	91.0
25/18.5	93.6	93.6	93.0	93.0	90.2	91.0
30/22	93.6	94.1	93.0	93.6	91.7	91.7
40/30	94.1	94.1	94.1	94.1	91.7	91.7
50/37	94.5	94.5	94.1	94.1	92.4	92.4
60/45	95.0	95.0	94.5	94.5	92.4	93.0
75/55	95.4	95.0	94.5	94.5	93.6	94.1
100/75	95.4	95.4	95.0	95.0	93.6	94.1
125/90	95.4	95.4	95.0	95.0	94.1	94.1
150/110	95.8	95.8	95.8	95.4	94.1	94.1
200/150	96.2	95.8	95.8	95.4	94.5	94.1

TABLE II.3—FEDERAL ENERGY CONSERVATION STANDARDS FOR FIRE PUMP ELECTRIC MOTORS AT 60 HZ

Motor horsepower/standard kilowatt equivalent	Nominal full-load efficiency (%)							
	2-Pole		4-Pole		6-Pole		8-Pole	
	Enclosed	Open	Enclosed	Open	Enclosed	Open	Enclosed	Open
1/.75	75.5	.....	82.5	82.5	80.0	80.0	74.0	74.0
1.5/1.1	82.5	82.5	84.0	84.0	85.5	84.0	77.0	75.5
2/1.5	84.0	84.0	84.0	84.0	86.5	85.5	82.5	85.5
3/2.2	85.5	84.0	87.5	86.5	87.5	86.5	84.0	86.5
5/3.7	87.5	85.5	87.5	87.5	87.5	87.5	85.5	87.5
7.5/5.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	88.5
10/7.5	89.5	88.5	89.5	89.5	89.5	90.2	88.5	89.5
15/11	90.2	89.5	91.0	91.0	90.2	90.2	88.5	89.5
20/15	90.2	90.2	91.0	91.0	90.2	91.0	89.5	90.2
25/18.5	91.0	91.0	92.4	91.7	91.7	91.7	89.5	90.2
30/22	91.0	91.0	92.4	92.4	91.7	92.4	91.0	91.0
40/30	91.7	91.7	93.0	93.0	93.0	93.0	91.0	91.0
50/37	92.4	92.4	93.0	93.0	93.0	93.0	91.7	91.7
60/45	93.0	93.0	93.6	93.6	93.6	93.6	91.7	92.4
75/55	93.0	93.0	94.1	94.1	93.6	93.6	93.0	93.6
100/75	93.6	93.0	94.5	94.1	94.1	94.1	93.0	93.6
125/90	94.5	93.6	94.5	94.5	94.1	94.1	93.6	93.6
150/110	94.5	93.6	95.0	95.0	95.0	94.5	93.6	93.6
200/150	95.0	94.5	95.0	95.0	95.0	94.5	94.1	93.6
250/186	95.4	94.5	95.0	95.4	95.0	95.4	94.5	94.5
300/224	95.4	95.0	95.4	95.4	95.0	95.4	.....	.....
350/261	95.4	95.0	95.4	95.4	95.0	95.4	.....	.....
400/298	95.4	95.4	95.4	95.4	.....	.....	.....	.....
450/336	95.4	95.8	95.4	95.8	.....	.....	.....	.....
500/373	95.4	95.8	95.8	95.8	.....	.....	.....	.....

B. Current Process

In it May 2020 Early Assessment Review RFI, DOE stated that it was initiating an early assessment 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 electric motors and sought information related to that effort. Specifically, 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 the foregoing. 85 FR 30878, 30879.

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 equipment 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 *www.regulations.gov/docket/EERE-2020-BT-STD-0007.*

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. DOE has also 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. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of electric motors. There are two elements to consider in the engineering analysis: (1) The selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and (2) the determination of equipment cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment 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 equipment 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 equipment.

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

B. Markups Analysis

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

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of equipment 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.[4]

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

C. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of electric motors at different efficiencies in representative commercial, industrial, and agricultural consumers, and to assess the energy savings potential of increased electric motor efficiency. The energy use analysis estimates the range of energy use of electric motors in the field (*i.e.,* as they are actually used by consumers). 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.

D. 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, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). 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.

E. 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).[5] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of electric motors sold from 2026 through 2055.

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

[4] Because the projected price of products at efficiency levels above the baseline 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.

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

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, equipment installed costs and operating costs, equipment annual energy consumption, the no-new standards case efficiency projection, and discount rates.

DOE estimates a combined total of 11.9 quads of site energy savings at the max-tech efficiency levels for electric motors. Combined site energy savings at Efficiency Level 1 for all equipment classes are estimated to be 3.3 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 electric motors 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 of 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: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=6&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 notice, 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.

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. 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 an overview of the topics addressed in the preliminary analysis, 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 will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. 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 public meeting, to submit in writing by May 2, 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 electric motors. 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, WordPerfect, 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, 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).

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 23, 2022, by Kelly J. Speaks-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 24, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–04272 Filed 3–1–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0110; Airspace Docket No. 22–AAL–7]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airway Blue 26 (B–26); Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway Blue 26 (B–26) in the vicinity of Fort Yukon, AK due to the pending decommissioning of the Yukon River, AK, (FTO) Non-directional Beacon (NDB).

DATES: Comments must be received on or before April 18, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0110; Airspace Docket No. 22–AAL–7 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F 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: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0110; Airspace Docket No. 22–AAL–7) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0110; Airspace Docket

No. 22–AAL–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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.

Background

The FAA provided notice to the public that the FAA would be conducting an aeronautical study of the proposal to decommission the Yukon River, AK, (FTO) NDB in Fort Yukon, AK in July 2021. The high cost to operate and maintain FTO were the main factors behind this consideration to decommission the NDB. The FAA conducted a non-rulemaking study in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters. As a result of the study, the FAA did not receive any objections to the removal of the NDB along with the supported airway.

Colored Federal airway Blue 26 (B–26) is dependent upon FTO and navigates between the Fort Yukon Airport (FYU), Alaska and the Ladd Army Airfield Airport (FBK), Alaska. The decommissioning of FTO would result in B–26 being unusable. The current mitigation to the proposed revocation of B–26 is to utilize VHF Omnidirectional Radar (VOR) Federal airway V–301 and Colored Federal airway Amber 17 (A–17). Future mitigation is also in the plans to provide a United States Area Navigation route as an additional option.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway B–26 due to the decommissioning of FTO. B–26 currently navigates between the Chena, AK, (CUN) NDB and FTO. The FAA proposes to revoke Colored Federal airway B–26 in its entirety.

Colored Federal airways are published in paragraph 6009(d) 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 Colored Federal airway listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(d) Colored Federal Airway

* * * * *

B–26 [Remove]

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Issued in Washington, DC, on February 24, 2022.

Michael R. Beckles,

Manager, Rules and Regulations Group.

[FR Doc. 2022–04290 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–94315; File No. S7–18–21]

RIN 3235–AN01

Reopening of Comment Period for Reporting of Securities Loans

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On November 18, 2021, the Securities and Exchange Commission issued for comment a proposed rule under the Securities Exchange Act of 1934 (''Exchange Act'') in Release No. 34–93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021) regarding the reporting of securities loans. The Commission is reopening the comment period for the proposed rule in light of the proposed Exchange Act rule regarding short sale disclosure. In particular, the Commission is soliciting comment on any potential effects of the proposed Exchange Act rule regarding short sale disclosure that the Commission should consider in determining whether to adopt the proposed Exchange Act rule regarding the reporting of securities loans.

DATES: The comment period for the proposed rule published in the **Federal Register** on December 8, 2021, at 86 FR 69802, is reopened. Comments should be received on or before April 1, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–18–21 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Theresa Hajost, Special Counsel, John Guidroz, Branch Chief, Josephine J. Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, at (202) 551–5777.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2021, the Commission issued for comment proposed 17 CFR 240.10c–1 (''Rule 10c–1''), Reporting of Securities Loans, under the Exchange Act.[1] The proposed rule is designed to increase the transparency and efficiency of the securities lending market by requiring any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association (''RNSA'').[2] The comment period for proposed Rule 10c–1 ended on January 7, 2022.

II. Reopening of Comment Period

On February 25, 2022, the Commission proposed 17 CFR 240.13f–2 (''Rule 13f–2'')[3] which is designed to provide greater transparency through the publication of short sale related data to investors and other market participants. Proposed Rule 13f–2 and related Proposed Form SHO would require that institutional money managers[4] file via the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR), on a monthly basis, certain short sale related data, some of which would be aggregated and made public.[5]

The Commission is reopening the comment period for proposed Rule 10c–1 so that commenters may consider whether there would be any effects of proposed Rule 13f–2 that the Commission should consider in connection with proposed Rule 10c–1.

The Commission is reopening the comment period for proposed Rule 10c–1 Reporting of Securities Loans[6] until April 1, 2022.

By the Commission.

Dated: February 25, 2022.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2022–04384 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Reporting of Securities Loans, Exchange Act Release 93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021).

[2] Proposed Rule 10c–1 would also require the RNSA to publicly disseminate certain information.

[3] Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release 94313, Feb. 25, 2022.

[4] As defined in Section 13(f)(6)(A) of the Exchange Act and for purposes of proposed Rule 13f–2, ''institutional investment manager'' includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of another person. 15 U.S.C. 78m(f)(6)(A).

[5] In addition to proposed Rule 13f–2 and proposed Form SHO, the Commission proposed: (i) Rule 205, which would establish a new ''buy to cover'' order marking requirement for certain purchase orders; and (ii) proposed amendments to the national market system plan governing the Consolidated Audit Trail (''CAT''), which would require CAT reporting firms to report ''buy to cover'' order marking information and reliance on the bona fide market making exception in the Commission's short sale rules.

[6] *See* Exchange Act Release No. 93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021).

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

[Docket No. Fiscal–2021–0007]

RIN 1530–AA21

Debt Collection Authorities Under the Debt Collection Improvement Act of 1996

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury (''Treasury''), Bureau of the Fiscal Service (''Fiscal Service''), proposes to amend its regulations regarding the Treasury Offset Program (''TOP'') and the Cross-Servicing program. The primary reason for doing so is to inform the public about how Fiscal Service will use Social Security numbers in mailings, as required by the Social Security Number Fraud Prevention Act of 2017, which requires Fiscal Service to have final regulations in place by September 15, 2022.

DATES: Comments must be received by May 2, 2022.

ADDRESSES: Fiscal Service participates in the U.S. Government's eRulemaking Initiative by publishing rulemaking information on *www.regulations.gov. Regulations.gov* offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Instructions for comment submission: Comments on this proposed rule, identified by docket FISCAL–2021–0007, should only be submitted using the Federal eRulemaking Portal at *regulations.gov*. Follow the instructions on the website for submitting comments.

All submissions received must include the agency name (''Bureau of the Fiscal Service'') and docket number (''FISCAL–2021–0007'') for this rulemaking. In general, comments will be published on *Regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Tawanna Edmonds, Director, Receivables Management & Debt Services Division, Debt Management Services, Bureau of the Fiscal Service at (202) 874–6810.

SUPPLEMENTARY INFORMATION:

I. Background

Legal Authorities. The Debt Collection Improvement Act of 1996 (''DCIA''), Public Law 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996), among other things, authorized Federal agencies to refer Federal nontax debt to Treasury for collection services. *See* 31 U.S.C. 3711(g). The DCIA also authorized Federal disbursing officials to withhold eligible Federal nontax payments to pay the payee's delinquent nontax debt owed to the United States. *See* 31 U.S.C. 3716(c). The DCIA also provided that Federal nontax payments may be offset to collect delinquent debt owed to States, including past-due support, and that payments made by States may be offset to collect delinquent nontax debt owed to the United States. *See* 31 U.S.C. 3716(h). Further, Federal tax refund payments may be offset to collect nontax debt owed to the United States and debt owed to States, including past-due support. *See* 26 U.S.C. 6402, 31 U.S.C. 3720A, and 42 U.S.C. 664.

Cross-Servicing program. Fiscal Service administers the Cross-Servicing program, through which it provides delinquent nontax debt collection services pursuant to 31 U.S.C. 3711(g).

Centralized Receivables Service. Fiscal Service administers the Centralized Receivables Service, or CRS, through which it provides invoicing and early delinquent debt collection services to Federal agencies under 31 U.S.C. 3711(g).

Treasury Offset Program. Fiscal Service administers a centralized offset program, known as the Treasury Offset Program, or TOP, through which it offsets payments to collect debts.

Revision of Existing Regulations. Fiscal Service promulgated 31 CFR 285.12 to implement 31 U.S.C. 3711(g). Among other things, the regulation codified at 31 CFR 285.12 describes the procedures and criteria for transferring delinquent debt to Treasury. It also explains the statutory exceptions to this requirement and the standards under which the Secretary of the Treasury will determine whether to grant exemptions to this requirement.

Fiscal Service promulgated 31 CFR part 285, subpart A to implement the centralized offset of payments through TOP, pursuant to the Debt Collection Improvement Act of 1996.

Fiscal Service proposes to revise the regulations codified at 31 CFR part 285, subpart A, and 31 CFR 285.12 (together, the ''existing regulations'') for several reasons. The primary reason for doing so is to inform the public about how Fiscal Service will use Social Security numbers in mailings, as required by the Social Security Number Fraud Prevention Act of 2017, which requires Fiscal Service to have final regulations in place by September 15, 2022. The proposed rule also adds definitions for previously undefined terms and rewords certain provisions for clarity, consistent with the requirements of the Plain Writing Act of 2010 and Executive Order 12866 (Sept. 1993).

II. Section Analysis

This section describes, section-by-section, the reasoning for the proposed revision (the ''proposed rule'') of the existing regulations. Fiscal Service acknowledges that many of the provisions regarding the use of SSNs is repetitive. This repetition is necessary given the current structure of the rules. Fiscal Service may address this repetition in a subsequent regulation.

285.1(q)—Social Security Numbers

The proposed rule would add § 285.1(q) to address how Fiscal Service uses SSNs in TOP for offset of Federal nontax payments to collect past-due support, as required by the SSN Act.

285.3(m)—Social Security Numbers

The proposed rule would add § 285.3(m) to address how Fiscal Service uses SSNs in TOP for offset of Federal tax payments to collect past-due support, as required by the SSN Act.

285.5(l)—Social Security Numbers

The proposed rule would add § 285.5(l) to address how Fiscal Service uses SSNs in TOP for offset of Federal nontax payments to collect nontax debts owed to the United States, including offset of Federal tax refunds (*see* § 285.2), Federal benefit payments (*see* § 285.4), and Federal salary payments (*see* § 285.7), as required by the SSN Act.

285.6(n)—Social Security Numbers

The proposed rule would add § 285.6(n) to address how Fiscal Service uses SSNs in TOP for offset of Federal nontax payments to collect state debts and the offset of payments made by States to collect Federal nontax debts, as required by the SSN Act.

285.8(k)—Social Security Numbers

The proposed rule would add § 285.8(k) to address how Fiscal Service uses SSNs in TOP for offset of Federal tax payments to collect certain debts owed by States, as required by the SSN Act.

285.12(a)—Definitions

Centralized Receivables Service. The proposed rule would add a definition for the term ''Centralized Receivables Service,'' which is not used in the existing regulation. The Centralized Receivable Service, or CRS, is a program established by Fiscal Service to assist Federal agencies in the management of current, non-tax receivables. CRS aims to increase collections and prevent delinquencies while allowing agencies to focus on important core missions. CRS also provides early delinquent debt collection services. While Federal agencies are generally required to refer Federal nontax delinquent debts over 120 days delinquent (or, in some cases, 180 days delinquent) to the Cross-Servicing program, Federal agencies may use CRS in their discretion. The proposed rule describes the CRS program to inform the public of the existence of this program and to comply with the SSN Act, which requires Fiscal Service to address how it uses SSNs in its mailings. See § 285.12(k) of the proposed rule.

Cross-Servicing program. The proposed rule would add a definition for the term ''Cross-Servicing program,'' which is used but undefined by the existing regulation. The proposed rule would also remove language from § 285.12(b) describing the term ''cross-servicing.''

Days delinquent. The proposed rule would add a definition for the term ''days delinquent,'' which is used but undefined by the existing regulation. The definition is intended to provide additional clarity, but not substantively change the meaning of the term.

Debt collection center. The proposed rule would make conforming changes given the definitions for ''Federal agency'' and ''Secretary.''

Debtor. The proposed rule would add a definition for the term ''debtor,'' which is used but undefined by the existing regulation. The definition is intended to provide additional clarity, but not substantively change the meaning of the term.

Delinquent or past-due. The proposed rule would add a definition for the term ''delinquent or past-due,'' which is used but undefined by the existing regulation. The definition is intended to provide additional clarity, but not substantively change the meaning of the term. The proposed rule would also remove language from § 285.12(c)(3) that included a description of the meaning of the term ''past-due.''

Federal agency. The proposed rule would replace the term ''agency'' with ''Federal agency.'' The definition itself would remain unchanged. This proposed change is intended to provide clarity, but not a substantive change in meaning.

Legally enforceable. The proposed rule would add a definition for the term ''legally enforceable,'' which is used but undefined by the existing regulation. The definition is similar to the definition for ''legally enforceable'' that is used in regulations governing Fiscal Service's administration of the Treasury Offset Program. *See* 31 CFR 285.5(b). An agency may have made a final agency determination that the debt is owed and is legally enforceable, even if the debtor has or may in the future appeal the debt with the agency or otherwise dispute the debt. If an agency has complied with due process prerequisites and if the agency's regulations do not preclude collection during an appeal, a pending appeal will not preclude the agency from referring the debt to the Cross-Servicing program for collection purposes. Debts that are not legally enforceable may not be referred to the Cross-Servicing program for collection purposes. The proposed rule would also remove language from § 285.12(c)(3), which included a description of the meaning of the term ''legally enforceable.''

Person. The proposed revision to the definition ''person'' is not a substantive change. It is intended to clarify that, for the purposes of this regulation, a person (and therefore a debtor) cannot be the United States.

285.12(b)—In General

The existing regulation describes the requirement for Federal agencies to refer delinquent debts to Treasury for collection action, exceptions to this requirement, and what actions Fiscal Service will take on referred debt. The existing regulation does not describe CRS. The proposed rule expands the scope of this regulation from the Cross-Servicing program to include both the Cross-Servicing program and CRS.

285.12(c)—Mandatory Transfer of Debts to Fiscal Service's Cross-Servicing Program

The proposed rule would amend the title to paragraph (c) to make clear that the provisions of paragraph (c) apply only to the Cross-Servicing program, and not also to CRS, which is not mentioned in the existing regulation.

The proposed rule would reorganize paragraph (c) for clarity and to eliminate unnecessary language. The proposed rule would clarify that debts are not subject to mandatory transfer if they are not legally enforceable or if they are below the threshold established by Fiscal Service.

It would use the term ''centralized offset'' which refers to offset through TOP, rather than the term ''administrative offset,'' which can include non-centralized offsets performed outside of TOP.

The proposed rule would define the terms ''legally enforceable'' and ''past due'' in the definition section of the regulation, rather than embedding the definitions into the substantive provisions of the regulation.

The proposed rule would eliminate the provision permitting agencies to combine individual debts for purposes of meeting the $25 threshold (or such other threshold as Fiscal Service may determine). The permissibility of aggregating debts into a single debt file may be addressed in separate guidance that Fiscal Service may issue.

285.12(d)—Exceptions to Mandatory Transfer

The proposed rule would amend paragraph (d)(1), which addresses exceptions to the requirement that agencies refer delinquent debt to the Cross-Servicing program. As described below, this proposed rule would delete paragraph (e), which addresses the schedule of private collection contractors. The proposed rule would restore the statutory exemption standard regarding private collection contractors. The proposed rule would move concepts from current paragraph (d)(6), which addresses the servicing and collection of debts by third parties, to paragraph (d)(1)(vi).

The proposed rule would amend paragraph (d)(4), which addresses internal offset, to streamline and clarify the language.

The proposed rule would amend paragraph (d)(5), which addresses requests for exemption of classes of debt from the requirement to refer debts to the Cross-Servicing program, by adding a title to the paragraph for clarity.

As described above, the proposed rule would delete paragraph (d)(6), which addresses the servicing and collection of debts by third parties, as those concepts were moved to paragraph (d)(1)(vi).

285.12(e)—Schedule of Private Collection Contractors

The proposed rule would delete paragraph (e), as it merely repeats the statutory requirement that Fiscal Service maintain a schedule of private collection contractors. To the extent an agency determines that referral of a debt to its own private collection contractor rather than referral to Fiscal Service's Cross-Servicing program is appropriate,

the agency should request an exemption from referral under the procedures specified in paragraph (d)(5).

285.12(i)—Certification

The proposed rule would substitute the word ''delegatee'' to ''delegate.'' The change in terminology is intended to make the language of the regulation consistent with other uses of the term. It is not intended to result in a substantive change in meaning.

285.12(j)—Fees

The proposed rule would delete unnecessary language regarding the term ''debt collection centers,'' which is defined in paragraph (a). It would also clarify that the fees are charged to Federal agencies (as opposed to debtors), regardless of whether a Federal agency passes on the amount of fees charged with regard to a particular debt to the debtor. It would also clarify that Fiscal Service and other debt collection centers have broad flexibility regarding how they calculate fees.

285.12(k)—Social Security Numbers

The proposed rule would add § 285.12(k) to address how Fiscal Service will use SSNs in its Cross-Servicing program and in CRS, as required by the SSN Act.

III. Procedural Analyses

Federalism

This proposed rule has been reviewed under Executive Order 13132, Federalism. This proposed rule would not have substantial direct effects on States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule would not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only impacts persons who receive payments from Federal agencies or States and who are delinquent on debts owed to Federal agencies or States. Accordingly, an initial regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Fiscal Service seeks comment on whether the certification made herein should be reconsidered and, if so, on what basis.

Regulatory Planning and Review

This proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that this proposed rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Child welfare, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Income taxes, Loan programs, Payments, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income, Taxes, Unemployment compensation, Veteran's benefits, Wages.

For the reasons set forth in the preamble, Fiscal Service proposes to amend 31 CFR part 285 as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. In § 285.1, add paragraph (q) to read as follows:

§ 285.1 Collection of past-due support by administrative offset.

* * * * *

(q) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer administrative offset, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

■ 3. In § 285.3, add paragraph (m) to read as follows:

§ 285.3 Offset of tax refund payments to collect past-due support.

* * * * *

(m) *Social Security numbers.* Fiscal Service will to ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the tax refund offset program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor

agency's account number, debt identification number, or debtor identification number; and

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities;

(4) When required by law.

■ 4. In § 285.5, add paragraph (l) to read as follows:

§ 285.5 Centralized offset of Federal payments to collect nontax debts owed to the United States.

* * * * *

(l) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the Treasury Offset Program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

■ 5. In § 285.6, add paragraph (n) to read as follows:

§ 285.6 Administrative offset under reciprocal agreements with states.

* * * * *

(n) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer administrative offset, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

■ 6. In § 285.8, add paragraph (k) to read as follows:

§ 285.8 Offset of tax refund payments to collect certain debts owed to States.

* * * * *

(k) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the tax refund offset program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

■ 7. § 285.12 is amended by:

■ a. Removing the words ''an agency'' and ''An agency'' and adding in their place the words ''a Federal agency'' and ''A Federal agency'', respectively;

■ b. Removing the words ''the agency'' and ''the agency's'' and adding in their place the words ''the Federal agency'' and ''the Federal agency's'', respectively;

■ c. In paragraph (a):

■ i. Removing the definition for ''Agency'',

■ ii. Adding in alphabetical order definitions for ''Centralized Receivables Service,'' ''Cross-Servicing program,'' and ''Days delinquent'';

■ iii. Removing the words ''Secretary of the Treasury'' and adding in their place the words ''Secretary'' in the definition for ''Debt collection center'';

■ iv. Adding in alphabetical order definitions for ''Debtor,'' ''Delinquent or past-due,'' ''Federal agency,'' and ''Legally enforceable''; and

■ v. Removing the words ''a Federal agency'' and adding in their place the words ''the United States or a Federal agency'' in the definition for ''Person'';

■ d. Revising paragraphs (b), (c), and (d)(1)(iii);

■ e. Removing the word ''or'' at the end of paragraph (d)(1)(v);

■ f. Redesignating paragraph (d)(1)(vi) as paragraph (d)(1)(vii);

■ g. Adding a new paragraph (d)(1)(vi),

■ h. Revising paragraphs (d)(4) and (d)(5) introductory text;

■ i. Removing paragraph (d)(6);

■ j. Removing and reserving paragraph (e);

■ k. In paragraph (i), removing the words ''delegatee'' and ''the Federal agency'' and adding in their place the words ''delegate'' and ''the debt'', respectively;

■ l. Revising paragraph (j); and

■ m. Adding paragraph (k).

The revisions and additions read as follows:

§ 285.12 Transfer of debts to Treasury for collection.

(a) * * *

Centralized Receivables Service means the program through which Fiscal Service provides servicing, pursuant to 31 U.S.C. 3711(g), for Federal nontax debt from the point at which a creditor agency establishes a debt until the debt is paid, otherwise resolved, or referred to the Cross-Servicing program for further action.

* * * * *

Cross-Servicing program means the program through which Fiscal Service provides delinquent nontax debt collection services pursuant to 31 U.S.C. 3711(g).

Days delinquent refers to the number of days that a debt has been in a delinquent status. For administrative debts (*e.g.,* debts arising from fines, penalties, and overpayments), the first day of delinquency generally is the date of the creditor agency's initial written demand for payment. For debts that arise from the extension of credit through direct loans, loan guarantees, or insurance, the date of delinquency generally is the due date specified in the applicable agreement or instrument.

* * * * *

Debtor means a person who owes a debt.

Delinquent or past-due refers to the status of a debt and means a debt has not been paid by the date specified in the creditor agency's initial written demand for payment, or other applicable agreement or instrument, unless other payment arrangements satisfactory to the creditor agency have been made.

Federal agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

* * * * *

Legally enforceable refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection. A debt would not be legally enforceable, for example, if the debt is:

(1) The subject of a pending administrative review required by a statute or regulation that prohibits collection action during the review process; or

(2) Governed by a statute that precludes collection.

(b) *In general.* Fiscal Service and other debt collection centers may take debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof. Fiscal Service provides these services through its Cross-Servicing program and its Centralized Receivables Service.

(c) *Mandatory transfer of debts to Fiscal Service's Cross-Servicing program.* (1) A debt is considered eligible for transfer to the Cross-Servicing program only if it is past due and is legally enforceable.

(2) Except as set forth in paragraphs (c)(3) and (d) of this section, a creditor agency must transfer any eligible debt that is over $25 (or such other amount as Fiscal Service may determine) to the Cross-Servicing program by no later than 120 days delinquent if the creditor agency relies on the Cross-Servicing program to submit the transferred debts for centralized offset on the creditor agency's behalf or, otherwise, by no more than 180 days delinquent.

(3) If a final agency determination resulting from an administrative appeal or review process is not made until after the time specified in paragraph (c)(2) of this section, the creditor agency must transfer such debt to the Cross-Servicing program within 30 days after the date of the final decision.

(4) For accounting and reporting purposes, the debt remains on the books and records of the Federal agency, which transferred the debt.

(5) On behalf of the creditor agency, Fiscal Service will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency must advise Fiscal Service, in writing, of any specific statutory or regulatory requirements pertaining to its debt and will agree, in writing, to a collection strategy, which includes parameters for entering into compromise and repayments agreements with debtors.

(d) * * *

(1) * * *

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor for a period of time determined by the Secretary;

* * * * *

(vi) Is being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies; or

* * * * *

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through the withholding of funds payable to the debtor by the creditor agency, or if the creditor agency has issued notice to the debtor of the creditor agency's intent to offset such funds.

(5) The secretary may exempt classes of debt from mandatory referral.

* * * * *

(j) *Fees.* Fiscal Service and other debt collection centers may charge Federal agencies fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fiscal Service and other debt collection centers may calculate fees in any manner designed to cover up to the full cost of providing these services, including based on a percentage of collections received on account of a debt while it was being serviced under this section or a flat fee based on actions taken under this section by Fiscal Service or another debt collection center with regard to a debt or group of debts. Such fees may be determined based on overall program costs and need not be based on costs related to the collection of a specific debt. Fiscal Service and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by Fiscal Service and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

(k) *Social Security numbers.* When conducting activities for or related to its Centralized Receivables Service or Cross-Servicing program, Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by physical mail or in the subject line of an email. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer these programs, Fiscal Service may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In communications with private collection contractor and agents that assist Fiscal Service in its debt collection activities;

(3) In notices and letters, including demand letters and notices to employers regarding wage garnishment, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(4) In notices to employers regarding wage garnishment;

(5) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's collection activities; and

(6) When required by law.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2022–03584 Filed 3–1–22; 8:45 am]

BILLING CODE 4810–AS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2021–0869; FRL–9503–01–R9]

Maintenance Plan and Redesignation Request; Nogales $PM_{2.5}$ Planning Area; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the ''FINAL SIP Revision: Nogales $PM_{2.5}$ Maintenance Plan and Redesignation Request (2006 Fine Particulate NAAQS)'' (''Nogales Maintenance Plan'' or ''Plan'') as a revision to the state implementation plan (SIP) for the State of Arizona. The Nogales Maintenance Plan includes, among other elements, an emissions inventory consistent with attainment, a maintenance demonstration, contingency provisions, and a motor vehicle emissions budget for the ten-year maintenance period. The EPA is also proposing to approve the State of Arizona's request to redesignate the Nogales area from nonattainment to attainment for the 24-hour national ambient air quality standard (NAAQS or ''standard'') for particulate matter of 2.5 micrometers or less ($PM_{2.5}$). The EPA is proposing these

actions because this SIP revision meets the applicable Clean Air Act (CAA or ''Act'') requirements for maintenance plans and because the State has met the requirements under the Act for redesignation of a nonattainment area to attainment with respect to the Nogales area.

DATES: Written comments must arrive on or before April 1, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0869 at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, or if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Anita Lee, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3958, or by email at *lee.anita@epa.gov*.

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

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I. Background

A. The $PM_{2.5}$ National Ambient Air Quality Standards

The EPA sets the NAAQS for certain ambient air pollutants at levels required to protect human health and the environment. Particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers, or $PM_{2.5}$, is one of these ambient air pollutants for which the EPA has established health-based standards. On July 18, 1997, the EPA established the first NAAQS for $PM_{2.5}$ (''the 1997 $PM_{2.5}$ Standards''), including an annual standard of 15.0 micrograms per cubic meter (μg/m^3) based on a three-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m^3 based on a three-year average of the 98th percentile of 24-hour concentrations.[1] The EPA established the 1997 $PM_{2.5}$ NAAQS based on significant evidence and numerous health studies demonstrating the serious health effects associated with exposures to $PM_{2.5}$. Subsequently, on October 17, 2006, the EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by revising it to 35 μg/m^3 and retained the level of the annual $PM_{2.5}$ standard at 15.0 μg/m^3.[2]

B. The Nogales Area and Regulatory Actions

Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to promulgate designations for areas throughout the U.S. in accordance with section 107(d)(1) of the CAA. Effective December 14, 2009, the EPA established the initial air quality designations for most areas in the United States for the 2006 24-hour $PM_{2.5}$ NAAQS.[3] Among these areas so designated in 2009, the EPA designated the Nogales planning area (''Nogales area'') as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS based on monitoring data from 2004 through 2007. The Nogales area covers 76.1 square miles and is in southern Santa Cruz County, Arizona, adjacent to the international border with Mexico and the city of Nogales, Sonora, Mexico.[4]

On June 2, 2014, the EPA classified as ''Moderate'' all areas that were designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ standards at the time under subpart 4 of part D of CAA title I, including the Nogales area.[5] The EPA also established a due date of December 31, 2014, for states to submit SIP revisions related to attainment and nonattainment new source review required for these areas pursuant to subpart 4.

On January 7, 2013, the EPA issued a determination under our clean data policy (a ''clean data determination'') for the Nogales area in relation to the 2006 24-hour $PM_{2.5}$ NAAQS based on three years of complete, quality-assured, and certified data for the 2009–2011 time frame.[6] The EPA's clean data determination for the Nogales area suspended, for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS, CAA requirements in sections 172 and 189 for an attainment demonstration, reasonably available control measure (RACM) demonstration, and reasonable further progress (RFP) demonstration; it also suspended the contingency measure provisions in section 172.[7]

Although the EPA's clean data determination suspended certain CAA requirements for the State, the requirement to submit $PM_{2.5}$ emissions inventories consistent with CAA section 172(c)(3) remained. Consequently, in September 2013, Arizona submitted to the EPA emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors (oxides of nitrogen (NO_X), volatile organic compounds (VOCs), sulfur dioxide (SO_2),[8] and ammonia (NH_3)). The EPA approved

[1] 62 FR 38652.

[2] 71 FR 61144.

[3] 74 FR 58688 (November 13, 2009).

[4] The legal nonattainment area boundaries for the Nogales area are described in 40 CFR 81.303. ADEQ provided a map portraying these boundaries in the Nogales Maintenance Plan, 5, Figure 2.

[5] 79 FR 31566.

[6] 78 FR 887.

[7] For a discussion of the clean data determination for the Nogales area and our clean data policy, see our October 30, 2012 proposed rulemaking (77 FR 65656). Also, the EPA codified the clean data policy in regulation as part of the $PM_{2.5}$ implementation rule finalized on August 24, 2016; 81 FR 58010 (codified at 40 CFR 51.1015).

[8] SO_2 is commonly used as the indicator for all gaseous sulfur oxides (SO_X).

these $PM_{2.5}$ and precursor emissions inventories on February 9, 2015.[9]

In May 2017, as required by the CAA, the EPA determined that the Nogales area attained the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015, the date specified by the Act.[10] The EPA relied on 2013–2015 ambient $PM_{2.5}$ data in making this determination that the Nogales area attained the NAAQS by the applicable date.

C. CAA and Regulatory Requirements for Redesignations and Maintenance Plans

The CAA establishes the criteria that must be met for the EPA to redesignate a nonattainment area to attainment of a given NAAQS. Specifically, section 107(d)(3)(E) sets forth the following criteria: (1) The EPA must determine that the area has attained the applicable NAAQS; (2) the EPA must have fully approved the applicable implementation plan for the area under CAA section 110(k); (3) the EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions; (4) the EPA must have fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and, (5) the state must have met all requirements applicable to the area under section 110 and title I, part D (''part D'') of the CAA. Section 110 identifies a comprehensive list of elements that must be included in SIPs and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts. The generally applicable SIP requirements for nonattainment areas are found in subpart 1 of part D, and the particulate matter-specific SIP requirements are found in subpart 4 of part D.

The EPA provided guidance on redesignations in a document titled ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published in the **Federal Register** on April 16, 1992,[11] and supplemented on April 28, 1992 (collectively referred to herein as the ''General Preamble'').[12] The EPA issued additional guidance in two memoranda: A September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (referred to herein as the ''Calcagni memo''); and, a 1994 memorandum from Mary D. Nichols, titled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment'' (''Nichols memo'').

The EPA's approval of a state's maintenance plan is one of the CAA prerequisites for redesignation of a nonattainment area to attainment. Section 175A of the CAA provides the general framework for a state's maintenance plans. A state's initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation and include any additional control measures necessary to ensure such maintenance. In addition, maintenance plans must contain contingency provisions necessary to assure the prompt correction of a violation of the NAAQS during the maintenance period. At a minimum, these contingency provisions must include a requirement that a state will implement all control measures contained in the nonattainment SIP prior to redesignation. Because a state's maintenance plan submittals are SIP revisions, the EPA is obligated under CAA section 110(k) to approve them or disapprove them depending upon whether they meet the applicable CAA requirements for such plans outlined above.

For the reasons described in section III of this proposal, the EPA is proposing to approve the Nogales Maintenance Plan and to approve Arizona's request for redesignation of the Nogales area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA's proposed approvals are based on our conclusion that Arizona has satisfied all the criteria under CAA section 107(d)(3)(E).

II. Submissions From the State of Arizona To Redesignate the Nogales Area To Attainment of the 24-Hour $PM_{2.5}$ NAAQS

A. Summary of State Submissions

On April 13, 2021, the Arizona Department of Environmental Quality (ADEQ) submitted to the EPA its redesignation request and the Nogales Maintenance Plan as a revision to the Arizona SIP.[13] This document addresses all of the CAA section 107(d)(3)(E) requirements for redesignating a nonattainment area to attainment of the NAAQS and includes the required maintenance plan elements. The Nogales Maintenance Plan is organized into seven chapters and five appendices with the maintenance plan elements found in Chapters 5 and 6. The five appendices provide support for the Plan and are divided into the following categories: Technical support and documentation for emissions inventories (appendices B–D); and SIP adoption authority, public notice and hearing documentation (appendices A and E).

B. CAA Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP revision to the EPA. To meet this procedural requirement, a state must include evidence that it provided adequate public notice and an opportunity for a public hearing, consistent with the EPA's implementing regulations in 40 CFR 51.102.

ADEQ provided public notice and opportunity for public comment on the Nogales Maintenance Plan. On December 29, 2020, ADEQ released a draft of the Nogales Maintenance Plan for public review and published a notice of public meeting to be held on January 28, 2021, to consider adoption of the Nogales Maintenance Plan.[14] Following a virtual public hearing on January 28, 2021,[15] ADEQ adopted the Nogales Maintenance Plan as a revision to the Arizona SIP on April 7, 2021, and submitted the Plan to the EPA on April 13, 2021. On October 13, 2021, the Nogales Maintenance Plan became complete by operation of law pursuant to CAA section 110(k)(1)(B).

Based on information provided in the SIP submission and summarized in this proposal, the EPA proposes to find that the submittal of the Nogales Maintenance Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

[9] 80 FR 6907.

[10] 82 FR 21711 (May 10, 2017).

[11] 57 FR 13498.

[12] 57 FR 18070.

[13] Letter dated April 7, 2021, from Daniel Czecholinski, Director, Air Quality Division, Arizona Department of Environmental Quality, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. Subsequently, Arizona made an electronic submittal of the Nogales Maintenance Plan on April 13, 2021, via the EPA's State Plan Electronic Collection System.

[14] ''Arizona Department of Environmental Quality and Public Comment Period and Hearing'' published in the Nogales International on December 29, 2020, and January 1, 2021; Exhibit E–III, Appendix E, Nogales $PM_{2.5}$ Maintenance Plan. A similar public notice appeared on the ADEQ website.

[15] ''Public Hearing Presiding Officer Certification'' signed by Zachary Dorn, Presiding Officer, notarized and dated February 17, 2021, Appendix E, Nogales Maintenance Plan. The hearing transcript, the public comments, and State responses are also found in Appendix E of the Nogales Maintenance Plan.

III. Evaluation of Arizona's Redesignation Request for the Nogales Area

A. Evaluation of Whether the Nogales Area Has Attained the $PM_{2.5}$ NAAQS

1. Statutory and Regulatory Requirements

Pursuant to section 107(d)(3)(E)(i) of the CAA, for a nonattainment area to be redesignated to attainment, the EPA must determine that the area has attained the relevant NAAQS. The EPA interprets this requirement to mean that the area must have an attaining design value based on the most recently available and quality-assured air quality monitoring data, collected in accordance with the requirements of 40 CFR part 58.[16] These requirements include quality assurance procedures for monitor operation and data handling, siting parameters for instruments or instrument probes, and minimum ambient air quality monitoring network requirements.[17] State, local, or tribal agencies that operate air monitoring sites in accordance with 40 CFR part 58 must enter the ambient air quality data and associated quality assurance data from these sites in the EPA Air Quality System (AQS) database.[18] These monitoring agencies certify annually that these data are accurate to the best of their knowledge, taking into consideration the quality assurance findings.[19] Accordingly, the EPA relies primarily on AQS data when determining the attainment status of an area.

In accordance with 40 CFR part 50, Appendix N, generally the EPA's finding of attainment of the 2006 24-hour $PM_{2.5}$ NAAQS must be based upon complete, certified data gathered at eligible monitoring sites in the nonattainment area in accordance with 40 CFR part 58 and entered in AQS.[20] For the 24-hour $PM_{2.5}$ standard, Appendix N section 1.0(c) defines eligible monitoring sites as those that meet the technical requirements in 40 CFR 58.11. Under 40 CFR 50.13 and in accordance with part 50, Appendix N, an area meets the 2006 24-hour $PM_{2.5}$ NAAQS when the design value at each eligible monitoring site within the area is less than or equal to 35 $\mu g/m^3$, based on the rounding convention in 40 CFR part 50, Appendix N.[21]

To have a valid design value showing attainment of the $PM_{2.5}$ standard at a given monitoring site, the ambient air quality data must meet data completeness or substitution requirements for each year under consideration. The completeness requirements are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.[22] In determining whether data are suitable for regulatory determinations, the EPA uses a ''weight of evidence'' approach, considering the requirements of 40 CFR part 58, Appendix A ''in combination with other data quality information, reports, and similar documentation that demonstrate overall compliance with Part 58.'' [23]

2. Monitoring Network Review, Quality Assurance, and Data Completeness

ADEQ is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for the Nogales area. As a result, ADEQ submits annual monitoring network plans to the EPA.[24] These plans document the status of ADEQ's air monitoring network, as required under 40 CFR 58.10. The EPA reviews these annual network plans for compliance with the specific requirements in 40 CFR part 58. With respect to $PM_{2.5}$, we have found that the annual network plans submitted by ADEQ meet these requirements under 40 CFR part 58, including minimum monitoring requirements.[25] The Nogales Post Office monitoring site (AQS ID: 04–023–0004) is the only $PM_{2.5}$ monitoring site in the Nogales area.[26]

In accordance with 40 CFR 58.15, ADEQ certifies annually that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.[27] Along with the certification letters, ADEQ submits a summary of the precision and accuracy data for all ambient air quality data.[28] The EPA's evaluations of the relevant quality assurance data are reflected in the associated AQS design value reports.[29] These reports include a certification evaluation and concurrence (''Cert&Eval'') flag indicating the overall quality of the corresponding monitoring data. Over the period 2018–2020, the associated Cert&Eval flag in the design value report was ''Y'' for the Nogales Post Office $PM_{2.5}$ monitoring site, meaning that ''[t]he certifying agency has submitted a certification letter, and EPA has no unresolved reservations about data quality (after reviewing the letter, the attached summary reports, the amount of quality assurance data submitted to AQS, the quality statistics, and the highest reported concentrations).'' [30]

The Nogales area Design Value Report also included a validity indicator (''Valid Ind.'') that reflects whether the design value is valid (*i.e.,* calculated using data that meet the applicable completeness criteria). For the purposes of this proposal, we reviewed the data for the 2018–2020 period for completeness and determined that the $PM_{2.5}$ data collected by ADEQ met the 75 percent completeness criterion for all 12 quarters at the $PM_{2.5}$ monitoring site in the Nogales area.[31]

Finally, the EPA conducts regular technical systems audits (TSAs) where we review and inspect state and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data. For the purposes of this proposal, we reviewed the findings from the EPA's 2018 TSA of ADEQ's ambient air monitoring program.[32] In Finding 11 of the 2018 TSA, the EPA noted that:

[16] 57 FR 13563.

[17] 40 CFR 58.2(a).

[18] 40 CFR 58.16. AQS is the EPA's national repository of ambient air quality data.

[19] 40 CFR 58.15(a).

[20] 40 CFR part 50, Appendix N, section 3.0.

[21] The 24-hour $PM_{2.5}$ standard design value is the three-year average of 98th percentile of 24-hour concentrations.

[22] 40 CFR part 50, Appendix N, section 4.2(b).

[23] 40 CFR part 58, Appendix A, section 1.2.3.

[24] We have included in our docket copies of Arizona's monitoring network plans for 2018–2020, *e.g.,* ''State of Arizona Air Monitoring Network Plan for the Year 2020.''

[25] We have included in our docket our reviews of ADEQ's annual network plans and the correspondence transmitting these reviews, *e.g.,* correspondence dated October 28, 2020, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Daniel Czecholinski, Director, Air Quality Division, ADEQ.

[26] See, *e.g.,* ''State of Arizona Air Monitoring Network Plan for the Year 2020,'' Table 2.2–1, ''SIP Network Monitoring Requirements.''

[27] We have included in our docket ADEQ's annual data certifications for 2018, 2019, and 2020, *e.g.,* correspondence dated April 26, 2021, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX. Annual data certification requirements can be found at 40 CFR 58.15.

[28] 40 CFR 58.15(c).

[29] AQS, Design Value Report (AMP480), dated November 19, 2021.

[30] Id.

[31] Id.

[32] Technical Systems Audit of the Ambient Air Monitoring Program: Arizona Department of Environmental Quality, April 2—April 6, 2018; Final Report dated April 2019 (''2018 TSA''). The 2018 TSA is attached to its transmittal letter dated April 25, 2019, from Elizabeth J. Adams, EPA Region IX, to Timothy J. Franquist, ADEQ.

The distance between collocated $PM_{2.5}$ monitors were not being met at Nogales Post Office (AQS ID: 04–023–0004). The primary Federal Reference Method (FRM) $PM_{2.5}$ monitor was 4.5 meters from the collocated FRM $PM_{2.5}$ monitor and therefore not meeting the requirement of 2 to 4 meters between monitors. Additionally, the collocated FRM $PM_{2.5}$ monitor was closer to the side of the building than the primary FRM $PM_{2.5}$ monitor and was close to not meeting siting requirements. Since the collocated FRM $PM_{2.5}$ monitor was 4.5 meters closer to the side of the building than the primary FRM $PM_{2.5}$ monitor, the monitor pair could measure different concentrations.[33]

To address this finding, ADEQ moved the collocated monitor to 2.2 meters from the primary FRM monitor on February 2, 2019.[34]

The EPA did not recommend invalidating any data from the Nogales Post Office monitoring site based on this TSA finding.[35] The purpose of distance requirements for collocated $PM_{2.5}$ monitors is to ensure that the two monitors measure similar concentrations so that data from the monitors can be compared to estimate the precision of the measurements.[36] Under the EPA's weight of evidence approach for evaluating the suitability of data for regulatory purposes, the precision of $PM_{2.5}$ measurements is considered a systematic criterion,[37] meaning that it is important for the correct interpretation of the data, but it does not usually affect the validity of a sample or group of samples.[38] Accordingly, the fact that the collocated monitors were 4.5 meters apart does not affect the validity of the data collected at the Nogales Post Office monitoring site.

To summarize, based on the EPA's reviews of the relevant monitoring network plans, certifications, quality assurance data, and 2018 TSA, we propose to find that the $PM_{2.5}$ data collected at the Nogales Post Office monitoring site are suitable for determining whether the Nogales area has attained 2006 $PM_{2.5}$ 24-hour NAAQS based on the most recent certified data available in AQS.

3. Evaluation of Attainment

Table 1 shows the calculated 24-hour $PM_{2.5}$ design value at the Nogales Post Office monitoring site within the Nogales area for the 2018–2020 period.[39] The data show that the 24-hour design value for the 2018–2020 period, 26 μg/m³, was equal to or less than 35 μg/m³, the 2006 $PM_{2.5}$ 24-hour NAAQS;[40] and, preliminary data for 2021 continue to show that the Nogales area is meeting the NAAQS.[41] Consequently, based upon three years of complete, quality-assured and certified data from 2018–2020, the EPA proposes to determine that the Nogales area has attained and continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 1—NOGALES AREA 2020 DESIGN VALUE FOR THE 2006 $PM_{2.5}$ 24-HOUR NAAQS WITH ANNUAL 98TH PERCENTILE CONCENTRATIONS

[μg/m³]

Monitor	AQS site ID No.	98th percentile			2018–2020 design value
		2018	2019	2020	
Nogales Post Office	04–023–0004	21.8	24.7	32.2	26

Source: AQS, Design Value Report, dated November 19, 2021.

B. The Area Must Have a Fully Approved SIP Meeting the Requirements Applicable for the Purposes of Redesignation Under Section 110 and Part D of the CAA

Under CAA section 107(d)(3)(E)(ii) and (v), the EPA must have fully approved the applicable SIP for the nonattainment area under CAA section 110(k) and the state containing such an area must have met all requirements applicable to the area under section 110 and part D. We interpret the references to the ''applicable implementation plan'' and ''applicable requirements'' in section 107(d)(3)(E)(ii) and in 107(d)(3)(E)(v), respectively, to mean that a SIP must be fully approved only with respect to requirements that are applicable for purposes of redesignation. The CAA section 110 and part D requirements that are linked to a particular nonattainment area's designation and classification (except those directly related to attainment, as discussed in section II.B.2 of this proposal) are the relevant measures to evaluate in reviewing a redesignation request. Requirements that apply, regardless of the designation of an area of a state, are not applicable requirements for the purpose of redesignation, and the state will remain subject to these requirements after the nonattainment area is redesignated to attainment.

For example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state; these SIPs are often referred to as ''transport SIPs.'' Because the section 110(a)(2)(D) requirements for transport SIPs are not linked to a particular nonattainment area's designation and classification, but apply regardless of the area's attainment status, these are not applicable requirements for the purpose of redesignation, under CAA section 107(d)(3)(E). This is consistent with the EPA's existing policy on applicability of the conformity SIP requirement for redesignations.[42]

The EPA may rely on prior SIP approvals in approving a redesignation request,[43] and any additional measure or element we may approve in conjunction with our redesignation action.[44]

[33] Id. at 24.

[34] Letter dated July 2, 2019, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, Attachment: Finding Corrective Action Form.

[35] 2018 TSA Report, 24.

[36] 40 CFR part 58, Appendix A, sections 3.2.3 and 4.2.1.

[37] EPA, Quality Assurance Handbook for Air Pollution Measurement Systems (''QA Handbook''), Vol. II, Ambient Air Quality Monitoring Program, appendix D, March 2017, 28.

[38] Id., 2.

[39] We calculated the design value for the 2018–2020 period as the average of the annual 98th percentiles for each of the three years according to 40 CFR 50, Appendix N, section 4.5.

[40] AQS, Design Value Report, dated November 19, 2021.

[41] AQS, Combined Site Sample Values Report, dated November 19, 2021.

[42] 75 FR 36023, 36026 (June 24, 2010) and citations within.

[43] Calcagni Memo, 3; *Wall* v. *EPA,* F.3d 426 (6th Cir. 2001); and *Southwest Pennsylvania Growth Alliance* v. *Browner,* 114 F.3d 984, 989–990 (6th Cir. 1998).

[44] 68 FR 25418, 25426 (May 12, 2003) and citations within.

1. State Implementation Plan Requirements Under Section 110

The general SIP elements and requirements set forth in CAA section 110 include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permitting program; provisions for the implementation of part C requirements for prevention of significant deterioration (PSD); provisions for the implementation of part D requirements for nonattainment new source review permit programs; provisions for air pollution modeling; and, provisions for public and local agency participation in planning and emissions control rule development.

On numerous occasions, ADEQ has submitted, and the EPA has approved, provisions addressing the basic CAA section 110 provisions. The Arizona SIP contains enforceable emissions limitations; requires monitoring, compiling, and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and, provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that local or regional agencies are unable to meet their CAA obligations. Relevant to this proposal, on November 5, 2012, the EPA approved SIP revisions submitted by the state of Arizona with respect to the requirements of CAA section 110(a)(2) for the 2006 $PM_{2.5}$ NAAQS.[45]

In conclusion, we find that there are no outstanding or disapproved applicable SIP submittals that prevent redesignation of the Nogales area for the 2006 24-hour $PM_{2.5}$ standard. Therefore, we propose to conclude that the ADEQ has met all SIP requirements for the Nogales area that are applicable for purposes of redesignation under section 110 of the CAA.

[45] 77 FR 66398. The EPA approved the submittals as satisfying most requirements of CAA section 110(a)(2), but disapproved the submittals with respect to sections 110(a)(2)(C), (D)(i)(II), (D)(ii), (J), and (K) because of a deficiency with respect to PSD requirements in Maricopa and Pima counties. We also partially disapproved the submittals with respect to 110(a)(2)(E)(ii), but this disapproval pertained only to Maricopa, Pima, and Pinal counties and thus has no relevance to the Nogales area.

2. State Implementation Plan Requirements Under Part D

Subparts 1 and 4 of part D, title I of the CAA contain air quality planning requirements for $PM_{2.5}$ nonattainment areas. Subpart 1 contains general requirements for all nonattainment areas of any pollutant governed by a NAAQS, including $PM_{2.5}$. The subpart 1 requirements include, in relevant part, provisions for implementation of RACM, a demonstration of RFP, emissions inventories, a program for preconstruction review and permitting of new or modified major stationary sources, contingency measures, and transportation conformity.

Subpart 4 contains specific planning and scheduling requirements for $PM_{2.5}$ nonattainment areas. The requirements described in CAA section 189(a), (c), and (e) apply specifically to Moderate $PM_{2.5}$ nonattainment areas and include the following: An approved permit program for construction of new or modified major stationary sources; provisions for RACM; an attainment demonstration; quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and, provisions to ensure that the control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator has determined that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.

As noted in section I.B of this proposal, in 2013 the EPA issued a clean data determination for the Nogales area, based on 2009–2011 data. As part of this determination, we found that the following CAA requirements in sections 172 and 189 would not apply to the Nogales area for so long as the area continued to attain the $PM_{2.5}$ standard or until the area was redesignated to attainment: An attainment demonstration, RACM, RFP, and contingency measures.

Moreover, in the context of evaluating the area's eligibility for redesignation, there is a separate and additional justification for finding that requirements associated with attainment are not applicable for purposes of redesignation. Prior to and independent of the clean data policy, and in the context of redesignations specifically, the EPA has interpreted CAA SIP submittal requirements associated with attainment of the NAAQS (such as attainment and RFP demonstrations) as not being applicable for purposes of redesignation.[46] Similarly, the Calcagni memo provides that requirements for RFP and other measures needed for attainment will not apply for redesignations because they have meaning and applicability only where areas do not meet the NAAQS.[47] With respect to contingency measures, the EPA explained that the section 172(c)(9) contingency measure requirements are directed at ensuring RFP and attainment by the applicable date; consequently, these requirements no longer apply when an area has attained the standards and is eligible for redesignation. In addition, CAA section 175A(d) provides requirements for specific maintenance plan contingency provisions that effectively supersede the requirements of section 172(c)(9) for these maintenance areas.

In sum, the EPA has concluded that the requirements associated with attainment do not apply for purposes of evaluating whether an area attaining the standards qualifies for redesignation. The EPA has enunciated this position since the General Preamble was published in 1992, and it represents our interpretation of what constitutes applicable requirements under section 107(d)(3)(E). The courts have recognized the scope of the EPA's authority to interpret ''applicable requirements'' in the redesignation context.[48]

The remaining applicable part D requirements for Moderate $PM_{2.5}$ areas include the following: (1) An emissions inventory under section 172(c)(3); (2) a permit program for the construction and operation of new and modified major stationary sources of $PM_{2.5}$ under sections 172(c)(5) and 189(a)(1)(A); (3) control requirements for major stationary sources of $PM_{2.5}$ precursors under section 189(e), except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area; (4) requirements under section 172(c)(7) that meet the applicable provisions of section 110(a)(2); and, (5) provisions to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP under section 176(c). We discuss each of these requirements next.

a. Emissions Inventory

Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, current inventory of $PM_{2.5}$ and

[46] General Preamble, 13564.

[47] Calcagni memo, 6.

[48] The Seventh Circuit decision in *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding the EPA's redesignation of the St. Louis metropolitan area to attainment) is one such example.

precursor pollutants for the baseline year from all sources within the nonattainment area. As noted earlier in section I.C, we approved the Nogales area emissions inventories under CAA section 172(c)(3) in 2015.

b. Permits for New and Modified Major Stationary Sources

CAA sections 172(c)(5) and 189(a)(1)(A) require that states submit SIP revisions that establish certain requirements for new or modified major stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control (referred to as the lowest achievable emission rate (LAER)), and that increases in emissions from such stationary sources are offset to provide for RFP towards attainment in the nonattainment area. The major source threshold for Moderate $PM_{2.5}$ nonattainment areas is 100 tons per year of $PM_{2.5}$.[49] The process for reviewing permit applications and issuing permits for new or modified stationary sources of air pollution is referred to as new source review (NSR). With respect to nonattainment pollutants in nonattainment areas, this process is referred to as nonattainment NSR (NNSR). Areas that are designated as attainment or unclassifiable for one or more NAAQS are required to submit SIP revisions that ensure that major new stationary sources or major modifications of existing stationary sources meet the federal requirements for PSD, including application of best available control technology for each applicable pollutant emitted in significant amounts, among other requirements.[50]

ADEQ has air permitting responsibilities in Santa Cruz County and the Nogales area. ADEQ has an EPA-approved NNSR program for $PM_{2.5}$.[51] With respect to sources subject to ADEQ's jurisdiction, EPA-approved regulations include rules for the review of applications for new or modified stationary sources. The EPA has not approved ADEQ regulations specifically meeting the NNSR requirements of CAA sections 172(c)(5) and 189(a)(1)(A). The EPA interprets section 107(d)(3)(E)(v) of the CAA, however, such that final approval of an NNSR program is not a prerequisite to approving a state's redesignation request. The EPA has determined in past redesignations that an NNSR program does not have to be approved prior to redesignation provided that the area demonstrates maintenance of the standards without part D NNSR requirements in effect.[52]

The demonstration of maintenance of the $PM_{2.5}$ NAAQS in the Nogales Maintenance Plan relies on projections of future emissions based on various growth factors. For the types of stationary sources that are subject to ADEQ jurisdiction, future emissions are projected based on either the operational history of the facility or population growth projections and do not take credit for future control technology requirements, such as LAER, or for imposition of emissions offsets.[53] Thus, we find that the maintenance demonstration for the Nogales area does not rely on an NNSR program, and that the area need not have a fully-approved NNSR program prior to approval of the $PM_{2.5}$ redesignation request for the area.

If we finalize the redesignation action as proposed herein, the requirements of the PSD program will apply with respect to $PM_{2.5}$.[54] With respect to the PSD requirements, ADEQ has an EPA-approved PSD program under CAA sections 160 through 165 of the CAA, except for greenhouse gases (GHGs), and the EPA has delegated to ADEQ the authority to administer the federal PSD program for GHGs under 40 CFR 52.21.[55] These programs will apply to $PM_{2.5}$ emissions from new major sources and major modifications upon redesignation of the area to attainment. Thus, new major sources and major modifications to existing major sources with significant $PM_{2.5}$ emissions, as defined under 40 CFR 51.166 and 52.21, will be required to obtain a PSD permit.

We conclude that the Arizona SIP adequately meets the requirements of section 172(c)(5) and 189(a)(1)(A) for purposes of redesignation of the Nogales area.

c. Control Requirements for $PM_{2.5}$ Precursors

Section 189(e) of the CAA provides that control requirements for major stationary sources of direct PM_{10} (including $PM_{2.5}$) also apply to PM precursors from those sources, except where the EPA determines that major stationary sources of such precursors do not contribute significantly to PM_{10} levels that exceed the standards in the area. The CAA does not explicitly address whether it would be appropriate to include a potential exemption from precursor controls for all source categories under certain circumstances. In implementing subpart 4 for PM_{10}, the EPA has allowed states to determine that a precursor was ''insignificant'' where the state could show in its attainment plan that it would attain the NAAQS expeditiously without adoption of emissions reduction measures aimed at that precursor. This approach was upheld in *Association of Irritated Residents* v. *EPA*.[56] Subsequently, the EPA included this approach within the $PM_{2.5}$ SIP Requirements Rule.[57] A state may develop its attainment plan and adopt RACM that target and control only those precursors that are necessary for the purpose of timely attainment.[58]

Therefore, because the section 189(e) requirement is primarily actionable in the context of addressing precursors in an attainment plan, a precursor exemption analysis under section 189(e) and the EPA's implementing regulations is not an applicable requirement that needs to be fully approved in the context of a redesignation under CAA section 107(d)(3)(E)(ii). As discussed earlier in our proposal, for areas that are attaining the standards, the EPA does not interpret the requirements of subpart 1 and subpart 4 that are associated with attainment to be applicable requirements for the purpose of redesignating the area to attainment.

As previously noted, the EPA determined in 2013 and more recently in 2017 that the Nogales area had attained the 24-hour $PM_{2.5}$ NAAQS.[59] Therefore, no additional controls of any pollutant, including any $PM_{2.5}$ precursor, are necessary to bring the area into attainment. In section III.A of this proposal, we propose to find that the area continues to attain the NAAQS. In section III.C, the EPA proposes to determine that the Nogales area has

[49] CAA section 302(j).

[50] PSD requirements control the growth of new source emissions in areas designated as attainment or unclassifiable for a NAAQS.

[51] 80 FR 67319 (November 2, 2015); 83 FR 19631 (May 4, 2018); 86 FR 31927 (June 16, 2021).

[52] See, generally, the Nichols memo; see also, the more detailed explanations in the following redesignation rulemakings: Detroit, Michigan (60 FR 12467–12468, March 7, 1996); Cleveland-Akron-Lorrain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996); and San Joaquin Valley, California (73 FR 22307, 22313, April 25, 2008 and 73 FR 66759, 66766–66767, November 12, 2008).

[53] In Section III.D of this proposal, we discuss the point source emissions projections with respect to the Valencia Power Plant, the sole operating point source in the Nogales area and include perquisite citations to the Plan.

[54] With respect to other criteria pollutants, PSD requirements already apply in the Nogales area.

[55] 40 CFR 52.144.

[56] 423 F.3d 989 (9th Cir. 2005).

[57] See generally 81 FR 58017–58026.

[58] Id at 58020.

[59] Also, the Nogales area has recorded ambient air quality data under the $PM_{2.5}$ NAAQS continuously since 2009; refer to Nogales Maintenance Plan, 15, Figure 6.

attained the standard due to permanent and enforceable emissions reductions. Also, as presented in section III.D, we propose to find that the Nogales Maintenance Plan demonstrates continued maintenance of the 24-hour $PM_{2.5}$ NAAQS through 2032. Taken together, these factors support our conclusion that $PM_{2.5}$ precursors are controlled adequately.

d. Compliance With Section 110(a)(2)

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2). As described in section III.B.1 of this proposal, we conclude that the Arizona SIP meets the requirements of section 110(a)(2) that are applicable for purposes of this redesignation.

e. General and Transportation Conformity Requirements

Under section 176(c) of the CAA, states are required to revise their SIPs to establish criteria and procedures to ensure that federally supported or funded projects in nonattainment areas and former nonattainment areas subject to a maintenance plan (referred to as ''maintenance areas'') conform to the air quality planning goals in the applicable SIP. Section 176(c) further provides that state conformity provisions must be consistent with federal conformity regulations that the CAA requires the EPA to promulgate. The EPA's conformity regulations are codified at 40 CFR part 93, subpart A (referred to herein as ''transportation conformity'') and subpart B (referred to herein as ''general conformity''). Transportation conformity applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53), and general conformity applies to all other federally supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as ''conformity SIPs.'' In 2005, Congress amended section 176(c) of the CAA. Under the amended conformity statutory provisions, states are no longer required to submit conformity SIPs for general conformity, and the conformity SIP requirements for transportation conformity have been reduced to include only those relating to consultation, enforcement, and enforceability.[60]

We have not approved a transportation conformity SIP for the Nogales area. We consider it reasonable, however, to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) because the conformity SIP requirement continues to apply post-redesignation (conformity applies in maintenance areas as well as nonattainment areas) and because the federal conformity rules (set forth in 40 CFR part 93, subpart A and subpart B) apply where the EPA has not approved a state's rule.[61]

C. The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

To approve a redesignation to attainment, under section 107(d)(3)(E)(iii) of the CAA, the EPA is required to determine that a nonattainment area's improvement in air quality is due to emissions reductions that are permanent and enforceable, and that the improvement results from the implementation of the applicable SIP, applicable federal air pollution control regulations, and other permanent and enforceable regulations. Under this criterion, a state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emissions reductions. Attainment resulting from temporary reductions in emissions rates (*e.g.,* reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emissions reductions.[62]

Within the Nogales area, federal programs have been the primary measures contributing permanent and enforceable emissions reductions leading to attainment of the NAAQS. Increasingly stringent federal motor vehicle standards for cars and trucks, federal requirements for lower sulfur content in diesel fuel, and capital improvements to ports of entry (POE), and expansion of the Mariposa POE have contributed to reducing ambient $PM_{2.5}$ concentrations since the Nogales area was classified as nonattainment in 2009.

The federal motor vehicle program and federal fuel standards for sulfur content in diesel have contributed to attainment of the $PM_{2.5}$ NAAQS in the Nogales area by reducing emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors, such as SO_2 and NO_X.[63] Federal tier 2 and 3 motor vehicle standards implemented from 2004 to 2014 helped to reduce on-road mobile source $PM_{2.5}$ emissions in the Nogales area by 53 percent, from 2008 to 2017.[64] Federal sulfur content standards for diesel fuel were implemented in conjunction with the federal motor vehicle program standards. Lower sulfur content fuel has reduced SO_2 emissions and allowed pollution control equipment to operate more effectively to reduce emissions of other pollutants as well. Taken together these federal programs contributed to NO_X emission reductions of 56 percent in the Nogales area, in addition to the $PM_{2.5}$ emissions reduction discussed above.[65]

Beginning in 2010, the Mariposa POE, located 1.7 miles west of the Nogales Post Office monitor, underwent a series of capital improvements to expand this POE, to divert truck traffic from the DeConcini POE located in downtown Nogales, and to facilitate faster vehicle inspections resulting in less truck idling and faster throughput at the Mariposa POE.[66] These capital improvements included significant increases in the number of inspection facilities for both commercial trucks and motor vehicles. These POE capital improvements contributed to reduced $PM_{2.5}$ emissions associated with truck crossings at the U.S./Mexico border.[67]

With respect to the connection between the emissions reductions and the improvement in air quality, we also conclude that the air quality improvement in the Nogales area is not the result of a local economic downturn, temporary emissions reductions, or unusual or extreme weather patterns. Our conclusion is based on the observation that the $PM_{2.5}$ design value for the Nogales area has been below 35 $\mu g/m^3$, the level of the 2006 $PM_{2.5}$ 24-hour NAAQS, since 2009 and has been consistently between 25–30 $\mu g/m^3$ from 2011 to 2020.[68] In sum, ambient $PM_{2.5}$ concentrations in the Nogales area have been consistently below the NAAQS for a lengthy period of time, and have not been subject to large swings and disparate observations that a sudden facility closure or an extreme weather pattern might produce.

In conclusion, we find that the improvement in ambient air quality in the Nogales area is due to permanent and enforceable reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors, resulting from control measures such as (1) implementation of the federal motor vehicle program and diesel fuel

[60] CAA section 176(c)(4)(E).

[61] See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also, 60 FR 62748 (December 7, 1995).

[62] Calcagni memo, 4.

[63] Nogales Maintenance Plan, 22–24.

[64] Nogales Maintenance Plan, 22.

[65] Nogales Maintenance Plan, 24.

[66] Nogales Maintenance Plan, 19–22.

[67] Nogales Maintenance Plan, 21.

[68] Id. at 15, Figure 6.

standards; and (2) facility capital expansions and processing improvements leading to reduced motor vehicle idling times and faster vehicle throughput at federal POEs. Therefore, we propose to find that Arizona has satisfied the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii).

D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Under section 107(d)(3)(E)(iv) of the CAA, to approve a redesignation to attainment, the EPA must fully approve a maintenance plan for the area as meeting the requirements of section 175A of the CAA. Section 175A specifies the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after redesignation, a state must submit a revised maintenance plan that demonstrates continued attainment for the subsequent 10-year period following the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions as the EPA deems necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The Calcagni memo provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should include an attainment emissions inventory, maintenance demonstration, monitoring and verification of continued attainment, and a contingency plan. Based on our review and evaluation of the Nogales Maintenance Plan, we are proposing to approve the Plan as meeting the requirements of CAA section 175A.

1. Attainment Inventory

A maintenance plan for the $PM_{2.5}$ NAAQS should include an ''attainment emissions inventory'' of direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursors in the area to identify a level of emissions sufficient to attain the 24-hour $PM_{2.5}$ NAAQS.[69] The attainment emissions inventory should be consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas available at the time it was developed and should represent emissions during the timeframe associated with the ambient air quality monitoring data showing attainment of the NAAQS. The EPA has provided guidance for developing PM emissions inventories in ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (July 2017).

The Nogales Maintenance Plan's demonstration that the area attained the standard is based on monitoring data from 2017–2019, the three most recent years with certified air quality data available at the time of adoption and submittal of the Plan.[70] Consistent with this timeframe, ADEQ selected 2017 for the attainment emissions inventory. Appendix B of the Nogales Maintenance Plan is a technical support document (TSD) detailing the emissions data and development of the emissions inventory for the Plan.[71]

The attainment emissions inventory in the Nogales Maintenance Plan includes $PM_{2.5}$, NO_X, SO_X, VOC, and NH_3 estimates from all relevant source categories, which the Plan divides among point, nonpoint, on-road mobile, non-road mobile, and fugitive road dust.[72] ADEQ developed the emissions estimates for each source type using appropriate sources and methods.[73] Point source emissions were based on ADEQ's State and Local Emissions Inventory System (SLEIS) database and facility permit data.[74] Non-point source emissions were based on the county-level data in the EPA's 2014 National Emissions Inventory (NEI) projected to 2017 and allocated to the smaller nonattainment area.[75] On-road mobile source emissions were derived from running the MOVES2014b[76] emissions factor model with the appropriate vehicle population and vehicle miles traveled data.[77] Non-road mobile source emissions were derived from the same MOVES2014b model and county-level data, again allocated to the smaller nonattainment area.[78] Fugitive road dust emissions, from paved and unpaved roads, were derived from the county-wide 2014 NEI estimates, projected to 2017 using Arizona Department of Transportation (ADOT) vehicle miles traveled (VMT) estimates, and allocated to the Nogales area using population share.[79]

Table 2 presents a summary of actual annual $PM_{2.5}$ emissions estimates for the 2017 attainment year for sources in the Nogales area.[80] Based on the emissions estimates for 2017 in Table 2, combined fugitive road dust (unpaved and paved roads) accounts for approximately 59 percent of total $PM_{2.5}$ emissions in the area. The next highest source category is non-point sources at 30 percent.

TABLE 2—2017 NOGALES AREA $PM_{2.5}$ AND PRECURSOR COMPOUND EMISSIONS INVENTORIES BY SOURCE CATEGORY

[Tons per year]

Category	$PM_{2.5}$	NO_X	SO_X	VOC	NH_3
Point Sources	0.17	7.8	0.054	0.066	.....
Non-Point Sources	57.0	39.0	2.4	432.0	3.7
On-Road Mobile Emissions	10.2	414.4	1.8	245.1	6.0
Non-Road Mobile Emissions	9.3	123.2	0.48	77.0	0.188
Unpaved Road Fugitive Dust	96.2	.....	.....	.....	.....
Paved Road Fugitive Dust	13.6	.....	.....	.....	.....
Totals	186.5	584.4	4.7	754.2	9.9

Source: TSD, 41, Table 4–9. Numbers may differ slightly due to rounding.

[69] Calcagni Memo, 8–9.

[70] The Plan was submitted to the EPA on April 13, 2021, prior to certification of 2020 monitoring data on April 26, 2021.

[71] Nogales Maintenance Plan, Appendix B—''Emissions Inventory Technical Support Document for the 2006 Nogales $PM_{2.5}$ Maintenance Area''.

[72] Nogales Maintenance Plan, 38, section 5.1 and Table 5–1.

[73] TSD, 25, Table 3–1.

[74] Id. at 25, Section 3.1.

[75] Id. at 27, Section 3.3.

[76] EPA's Motor Vehicle Emission Simulator (MOVES) is a state-of-the-science emission modeling system.

[77] Id. at 25, Section 3.2.1.

[78] Id. at 25, Section 3.2.2.

[79] Id. at 27, Section 3.2.3.

[80] As we discuss in section III.D.2 of this proposal, the winter day emissions inventories for the maintenance demonstration include winter daily emissions estimates and daily average emissions estimates scaled from the annual emissions estimates.

Based on our review of the attainment emissions inventory in the Nogales Maintenance Plan, including the supporting information in the TSD, we find that the attainment year inventory is comprehensive, the methods and assumptions used by ADEQ to develop the inventories are reasonable, and the 2017 inventory reasonably estimates actual $PM_{2.5}$ emissions in that year. We also find that the 2017 emissions inventory is appropriate for use as the attainment inventory for the Nogales Maintenance Plan because the year 2017 is within the 2017–2019 period during which the area was attaining the 24-hour $PM_{2.5}$ NAAQS.[81]

2. Maintenance Demonstration

Section 175A(a) of the CAA requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by conducting modeling that shows that the future mix of sources and emissions rates will not cause a violation of the NAAQS.[82] Assumptions concerning emissions rates in maintenance demonstrations should generally reflect permanent, enforceable measures.[83] Therefore, the analysis should assume that sources are operating at permitted levels (or historic peak levels), unless evidence is presented that such an assumption is unrealistic.[84]

To demonstrate maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS for ten years from redesignation, ADEQ projected annual and winter emissions inventories for $PM_{2.5}$, NO_X, SO_X, VOC, and NH_3 for 2026, the interim maintenance year, and 2032, the ten-year maintenance demonstration year.[85] Given that almost all recorded exceedances of the 24-hour $PM_{2.5}$ NAAQS in the recent past have occurred during the winter months of December and January,[86] ADEQ based its maintenance demonstration on a winter day emissions inventories analysis. Furthermore, because the 24-hour $PM_{2.5}$ NAAQS is a daily standard it is appropriate for the maintenance demonstration to be in the form of a daily emissions inventory comparison.

a. Annual Emissions Inventories Comparisons

Using the 2017 emissions inventories as a baseline and growth factors described in the TSD, ADEQ projected emissions inventories for 2026 and 2032. These projections were based primarily on Arizona's forecasts of population and VMT or in some cases, information particular to a given source or source category. To estimate mobile source emissions, ADEQ used an EPA on-road emissions model (*i.e.,* MOVES2014b).[87] Table 3 summarizes ADEQ's 2017 attainment year $PM_{2.5}$ emissions and projected $PM_{2.5}$ emission levels for 2026 and 2032.

TABLE 3—2017, 2026, AND 2032 NOGALES AREA $PM_{2.5}$ EMISSIONS INVENTORIES BY SOURCE CATEGORY

[Tons per year]

Category	2017	2026	2032	Projected change from 2017 to 2032
Point Sources	0.17	1.23	1.23	+1.06
Non-Point Sources	57.0	57.9	57.6	+0.6
On-Road Mobile Emissions	10.2	2.2	1.4	−8.8
Non-Road Mobile Emissions	9.3	6.0	5.2	−4.1
Unpaved Road Fugitive Dust	96.2	98.8	100.6	+4.4
Paved Road Fugitive Dust	13.6	14.0	14.2	+0.6
Totals	186.5	180.1	180.2	−6.3

Source: TSD 41, Table 4–9; TSD 60–63, Tables 6–4 through 6–8. Numbers may differ slightly due to rounding.

Despite expected population growth in the Nogales area,[88] the Plan's projected $PM_{2.5}$ annual emissions through 2032 are lower than the 2017 attainment year inventory emissions. The decrease in annual $PM_{2.5}$ emissions from 2017 to 2032 most likely reflects continued implementation of the federal motor vehicle program, cleaner motor vehicle fuels, and ongoing vehicle fleet turnover, whereby newer and cleaner vehicles are substituted for older more polluting vehicles as they are retired. A comparison of precursor compound totals from 2017 to 2032 in Table 4 suggests a similar conclusion. VOC and NO_X emissions are projected to decrease due to large reductions in the on-road mobile source category.[89] SO_X emissions are projected to increase, largely due to emissions in the point source category from the Valencia Power Plant (VPP), an electrical generation facility located north of the City of Nogales.[90] To address this projected increase in SO_X emissions in the annual and winter daily inventories, ADEQ provided additional analyses to demonstrate that VPP operations are unlikely to cause or contribute to future violations of the $PM_{2.5}$ NAAQS. We review the VPP analyses before proceeding to our review of the winter daily emissions inventories.

[81] Nogales Maintenance Plan, 15, Table 2–2.

[82] Calcagni memo, 9–11.

[83] Calcagni memo, 9.

[84] Id. at 4. See also, Memorandum dated November 30, 1993, from Kent D. Berry, Acting Director, Air Quality Management Division, Subject: Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas.

[85] Nogales Maintenance Plan, section 5 and TSD.

[86] TSD, 20–22, Section 2.3 and Table 2–1.

[87] The EPA announced the release of a new version of MOVES in the **Federal Register** on January 7, 2021. 86 FR 1106. In that document, we explained that state and local agencies that had already completed significant work on a SIP with a version of MOVES2014 could continue to rely on the earlier version of MOVES. Id. at 1108. As of January 7, 2021, ADEQ had already released a draft of the Nogales Maintenance Plan for public review. Therefore, we consider the Plan's reliance on MOVES2014b to be appropriate.

[88] Nogales Maintenance Plan, 8, Table 1–5.

[89] Id. at 39, Table 5–2.

[90] Nogales Maintenance Plan Section 5.2.3; TSD Section 5.1; TSD-Appendix D. TSD 19, Figure 2–2 provides a map showing the location of the Valencia Power Plant in relation to the City of Nogales and the Nogales Post Office air quality monitoring station.

TABLE 4—2017, 2026, AND 2032 NOGALES AREA EMISSIONS INVENTORIES FOR $PM_{2.5}$ AND PRECURSOR POLLUTANT TOTALS

[Tons per year]

Pollutant	2017	2026	2032	Projected change from 2017 to 2032
$PM_{2.5}$	186.5	179.9	180.2	−6.3
NO_X	584.4	307.4	250.6	−333.8
SO_X	4.7	9.8	9.8	+5.1
VOC	754.3	665.8	650.0	−104.3
NH_3	9.8	8.3	7.9	−1.9

Source: Plan 39, Tables 5–2 and 5–3. Numbers may differ slightly due to rounding.

As noted, the EPA generally recommends use of permitted ''maximum potential to emit'' (''PTE'') levels or maximum historical emissions in maintenance demonstrations, unless a state presents evidence that such an assumption is unrealistic. ADEQ examined past VPP emissions levels to determine if the facility has approached its PTE. Facility records from 2000 to 2018 show that VPP has operated at levels significantly below its PTE.[91] For instance, from 2000–2018, the VPP's highest annual particulate matter emissions was 1.23 tons per year (tpy) in 2001 compared to its $PM_{2.5}$ PTE of 45.52 tpy.[92] Emissions levels from VPP have been even lower since 2014, due to a reduction in operating hours that resulted from improvements to transmission lines in the area.[93] Given that VPP's 2001 emissions represent the highest level of facility emissions since 2000, ADEQ used this data set as the basis for projecting conservative annual emissions estimates of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for VPP.

Also, because VPP can legally emit at its PTE, ADEQ conducted an analysis to determine the ambient air quality effects for direct $PM_{2.5}$ in the Nogales area if VPP were to operate at PTE levels.[94] VPP emissions of NO_X and SO_X are well below the Modeled Emission Rates for Precursors recommended in EPA guidance, and so we would not be expect them to cause or contribute to a violation of the $PM_{2.5}$ NAAQS.[95] ADEQ used AERSCREEN, an EPA screening-level air quality model to estimate VPP's worst case 24-hour $PM_{2.5}$ concentration when operating at PTE for direct $PM_{2.5}$ emissions. AERSCREEN[96] provides conservatively high concentration estimates by using worst case meteorology from among a range of wind speeds, degrees of cloud cover, temperatures, and other meteorological parameters. ADEQ post-processed AERSCEEN model output to exclude locations inside the facility boundary because they are not considered ambient air subject to the NAAQS. The analysis covered distances out to 10 kilometers; the highest concentrations were near the facility boundary, decreasing with distance from the boundary. ADEQ's analysis estimated that the highest ground level ambient $PM_{2.5}$ concentration that would result from VPP operating at its PTE, including background $PM_{2.5}$ concentrations, would be 30.9 $\mu g/m^3$, which is below the 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$.[97]

In addition to the AERSCREEN analysis, ADEQ examined the Nogales area meteorological data and wind patterns and determined that prevailing winds blow from south to north and that in cold weather with stagnant wind conditions, cold air masses move south to north.[98] Given that VPP is well north of the Nogales Post Office monitor, usual Nogales wind patterns and air movement are likely to move VPP emissions away from the monitor and the urbanized area in the southern portion of the nonattainment area. Furthermore, peak electrical power consumption in the desert southwestern U.S. is during the summer months, making this the most likely period VPP is to be operational, whereas the winter months have the highest $PM_{2.5}$ concentrations in the Nogales area.[99]

To summarize, as a conservative estimate of annual emissions levels at VPP, ADEQ utilized 2001 emissions data, the highest historical emissions levels in the 2000–2018 period. In addition, ADEQ estimated the worst case 24-hour $PM_{2.5}$ concentration for VPP and determined that at PTE levels the facility's $PM_{2.5}$ emissions are unlikely to cause or contribute to a violation of the $PM_{2.5}$ NAAQS. This conclusion is further buttressed by prevailing wind direction and meteorological data for the Nogales area.

b. Winter Daily Emissions Inventories Comparisons

In determining the need for winter daily emissions inventories as a basis for an attainment year (2017) to maintenance year (2032) comparison, ADEQ reviewed the 2014–2016 ambient air quality data sets. ADEQ found the ambient $PM_{2.5}$ concentrations rose as temperature dropped with the onset of the winter season, November through January.[100] December had the highest ambient $PM_{2.5}$ concentrations and concentrations rose as ambient temperatures dropped, particularly on days where the daily low temperature was less than 40° F. Given the data, ADEQ selected November-January as the Nogales area winter season.

With a few exceptions, the winter daily emissions inventories are based on the annual emission inventories.[101] More precisely, most winter daily source category emissions estimates are average daily emissions estimates

[91] Id. at 44, Table 5–4.

[92] Id. at Tables 5–3 and 5–4.

[93] Id. at 44.

[94] TSD-Appendix D: Valencia AERSCREEN Modeling Overview Technical Memo, from Kamran Khan, ADEQ, to Scott Bohning, EPA-Region IX, December 19, 2018.

[95] A Modeled Emission Rate for Precursors (MERP) is the precursor emission rate that is likely to cause an impact that may cause or contribute to a NAAQS violation. The VPP PTE emissions of 240 tpy NO_X and 200 tpy SO_X are far below the MERP levels for annual impacts for the southwestern U.S., roughly 11,000 tpy for each; also, VPP PTE emissions are also far below the MERPs for 24-hour impacts (*i.e.,* 6514 tpy for NO_X and 1508 tpy for SO_X). ''Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and $PM_{2.5}$ under the PSD Permitting Program,'' EPA 454/R–19–003. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, April 2019, available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[96] EPA, 2011. ''AERSCREEN Released as the EPA Recommended Screening Model''. Memorandum dated April 11, 2011, Office of Air Quality Planning and Standards, Research Triangle Park, NC. Available at web page *https://www.epa.gov/scram/air-quality-dispersion-modeling-screening-models#aerscreen.*

[97] TSD, 43 and TSD-Appendix D.

[98] TSD, 18, 19; Figures 2–1 and 2–2, respectively.

[99] Id. at 44.

[100] TSD, 64, Section 7.1 and Appendices B & C.

[101] Id. at 64–66, Section 7.2.

(annual emissions estimates divided by 365 days per year), except for the seasonal calculations for residential fuel combustion (RFC). The annual RFC emissions estimate was allocated to the 92-day November through January winter season. The winter daily emissions estimates for VPP were not based on winter operations, but were conservative in that all estimated annual VPP emissions were assigned to the 92-day winter season. The 2017 daily emissions estimate was based on 2013–2018 VPP operational data. The projected 2026 and 2032 daily emissions estimates were conservative estimates based on 2013–2018 data and operational maximums from 2013.[102] Then, ADEQ compared the ''winter daily'' projected 2026 and 2032 $PM_{2.5}$ estimate for VPP (*i.e.,* 1.8 tpy or 44 pounds per day) with the historical 2001 high $PM_{2.5}$ value (*i.e.,* 1.2 tpy), and found it to be a relatively more conservative estimate.[103]

TABLE 5—2017, 2026, AND 2032 NOGALES AREA $PM_{2.5}$ EMISSIONS INVENTORIES BY SOURCE CATEGORY

[Pounds per winter day]

Category	2017	2026	2032	Projected change from 2017 to 2032
Point Sources	13.8	44.0	44.0	+30.2
Non-Point Sources	164.0	181.9	190.9	+26.9
Residential Fuel Consumption	561.0	500.0	463.0	−98.0
On-Road Mobile Emissions	56.3	12.0	8.2	−48.1
Non-Road Mobile Emissions	51.2	32.7	28.5	−22.7
Unpaved Road Fugitive Dust	527.2	541.5	551.0	+23.8
Paved Road Fugitive Dust	74.5	76.5	77.8	+3.3
Totals	1,448.0	1,388.0	1,363.0	−84.6

Source: TSD, 67–70, Tables 7–2 and 7–4. Numbers may differ slightly due to rounding.

A review of the total daily $PM_{2.5}$ emissions in Table 5 shows that overall emissions are expected to decrease from 2017 to 2032. Like the annual emissions inventories estimates, mobile source emissions show the largest decreases and offset smaller increases in fugitive dust. RFC emissions are projected to decrease because of households switching to cleaner burning fuel sources over time.[104]

TABLE 6—2017, 2026, AND 2032 NOGALES AREA EMISSIONS INVENTORIES FOR $PM_{2.5}$ AND PRECURSOR POLLUTANTS

[Pounds per winter day]

Pollutant	2017	2026	2032	Projected change from 2017 to 2032
$PM_{2.5}$	1,448	1,388	1,363	−85
NO_X	3,821	2,882	2,594	−1,227
SO_X	45	82	83	+38
VOC	4,672	4,172	4,069	−603
NH_3	105	93	89	−16

Source: TSD 67–70, Tables 7–2 and 7–3. Numbers may differ slightly due to rounding.

A review of Table 6 shows that $PM_{2.5}$ and all precursor compound emissions are decreasing from 2017 to 2032, except for SO_X emissions. SO_X emissions are predicted to increase by 38 pounds per day over this timeframe due to increases in projected emissions from VPP, the only point source in the Nogales area.[105] As discussed, the projected 2032 daily VPP emissions estimates are very conservative when compared to past historical operations data, in terms of both magnitude and seasonal intensity, *i.e.,* assuming all facility emissions occur during the winter season. Also, ADEQ has examined the effect on ambient $PM_{2.5}$ concentrations if VPP emitted $PM_{2.5}$ at PTE levels and determined that the facility's direct $PM_{2.5}$ emissions are unlikely to cause a violation of the 24-hour $PM_{2.5}$ NAAQS, even at such high and historically unachieved emissions levels. Lastly, the Nogales area meteorology and wind pattern make it unlikely that VPP emissions would have a significant effect on ambient $PM_{2.5}$ concentrations at the Nogales Post Office monitor.

c. EPA Evaluation and Conclusion

Based on our review, we find that ADEQ used reasonable methods, growth factors, and assumptions to project direct $PM_{2.5}$ and precursor compound emissions to 2026 and 2032. ADEQ's emissions inventory projections show that future emissions through 2032 will be below estimated actual emissions in

[102] ADEQ used 0.0000964 ton of PM per megawatt hour (*i.e.,* 0.1928 pounds of PM per megawatt hour) as an emissions level and a gross daily load of 228 megawatt hours per day as an activity level, both values representing the highest operational data from 2013–2018. TSD, 65–66, Equation 7–2, within Section 7.2.1.

[103] TSD, 66. ADEQ calculated 1.8 tpy by multiplying 44 pounds per day by 83 days; 83 days are the maximum number of VPP operating days in the 2013–2018 period. In generating its 2032 projected VPP emissions, ADEQ is assuming that all 83 operational days are occuring during the winter season at the facility's highest recent rate; hence, their assertion that this is a conservative estimate of VPP emissions, given that VPP is more likely to be operational during the summer months during peak periods of energy demand.

[104] TSD, 31, 32, 64. Section 3.3.2.2 describes how the annual RFC per capita emissions factor was generated and applied to get an annual RFC emissions estimate. This annual estimate was then converted to a winter daily missions estimate by dividing the annual emissions estimate by the number of winter days from November through January, 92 days.

[105] Nogales Maintenance Plan, 43, Table 5–6.

2017, the attainment year, for $PM_{2.5}$ and all relevant precursor pollutants, except SO_X. ADEQ's projected 2032 SO_X emissions increase represents a small percentage of the overall emissions inventory compared to $PM_{2.5}$ and precursors, whether compared individually or collectively.[106] Also, the projected SO_X emissions estimates reflect conservative assumptions concerning VPP future operations when considered against the facility's historical record and most likely future operating scenario. ADEQ provided additional analyses and information to demonstrate that VPP is unlikely to cause a violation of the $PM_{2.5}$ NAAQS if VPP were to emit $PM_{2.5}$ at PTE levels. In conclusion, we find that ADEQ has provided an adequate basis to demonstrate maintenance of the 24-hour $PM_{2.5}$ NAAQS within the Nogales area through 2032.

Section 175A requires that maintenance plans provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. If this redesignation becomes effective in 2022, the projected 2032 emissions inventory demonstrates that the Nogales area will maintain the $PM_{2.5}$ NAAQS for 10 years beyond redesignation. Moreover, the projected interim emissions inventory for 2026, *i.e.,* the milestone year between the 2017 attainment inventory and the 2032 maintenance plan horizon year, sufficiently demonstrates that the Nogales area will maintain the standards throughout the period from redesignation through 2032. Therefore, we propose to find that the Nogales Maintenance Plan adequately demonstrates maintenance of the 24-hour $PM_{2.5}$ NAAQS through 2032.

3. Verification of Continued Attainment

Once an area has been redesignated, the state should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.[107] Data collected by the monitoring network are also needed to implement, if triggered, the contingency provisions of the maintenance plan.

As discussed in section III.A of this proposal, $PM_{2.5}$ is currently monitored by ADEQ within the Nogales area. In section 5.2 of the Nogales Maintenance Plan, ADEQ commits to continue operating a $PM_{2.5}$ air quality monitoring network in the Nogales area consistent with federal regulations and to consult with the EPA via the annual network review process regarding any potential changes to the network. We find that the Nogales Maintenance Plan contains adequate provisions for continued ambient $PM_{2.5}$ monitoring to verify continued attainment of the NAAQS through the maintenance period.

In addition to the ambient air monitoring program, the EPA also recommends that the State verify continued attainment through methods other than ambient air quality monitoring to show no significant change in projected activity levels or emissions factors, *e.g.,* periodic reviews of key data and assumptions used to develop the attainment inventory.[108] In the Nogales Maintenance Plan, ADEQ commits to perform a comprehensive review of the factors and assumptions used to develop the attainment and projected inventories to determine whether significant changes have occurred.[109] ADEQ's review will be conducted for the 2026 interim projection year and may include the following elements: Permit applications and source reports, population data, agricultural activity information, wildfire/prescribed burning data, and motor vehicle activity data.[110] In the Plan, ADEQ also identifies the legal authority under which the State collects the needed information to conduct the comprehensive review of the factors and assumptions used in developing the attainment and projected emissions inventories. We find that ADEQ's commitment to verify continued attainment of the NAAQS through a comprehensive review of the factors and assumptions used to develop the emissions inventories in the Nogales Maintenance Plan is acceptable.

4. Contingency Provisions

Section 175A(d) of the CAA requires that maintenance plans contain contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned that were contained in the SIP prior to the area being redesignated to attainment. These contingency provisions are distinguished from contingency measures required for nonattainment areas under CAA section 172(c)(9) in that they are not required to be fully-adopted measures that will take effect without further action by the state for the maintenance plan to be approved. The contingency provisions of a maintenance plan are, however, an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once the Plan's contingency provisions are triggered by a specified event. Thus, a state should identify the specific indicators or triggers that will be used to determine when the contingency measures need to be implemented. Next, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific timeline for action by a state.

The State has adopted a contingency plan to address possible future $PM_{2.5}$ air quality problems in the Nogales area. The contingency provisions are included in section 5.5 of the Plan. Upon a monitored violation of the $PM_{2.5}$ 24-hour NAAQS, ADEQ commits to the following steps:

1. Within 60 days of the NAAQS violation trigger, ADEQ will begin analyzing the cause(s) of the exceedances that led to the violation. The analysis will include review and validation of ambient air quality and meteorological data, evaluation to determine if any of the exceedances qualifies as an exceptional event per the EPA's Exceptional Event Rule (EER),[111] and assessment of emissions sources contributing to elevated $PM_{2.5}$ levels.
2. If an exceedance qualifies as an exceptional event, ADEQ will prepare and submit to the EPA an exceptional event demonstration. If, during its evaluation, ADEQ determines that new measures are needed to satisfy the requirements of the exceptional events rule, ADEQ will adopt and implement new measures that are permanent and enforceable and meet the ''reasonable'' level of control described in the EER.
3. If the exceedance does not qualify as an exceptional event, ADEQ will determine which source(s) contributed to the exceedance, identify existing control measures for the source(s), verify source(s) compliance with existing measures, and if necessary, develop, adopt and implement new permanent and enforceable measures or strengthen existing measures.

Under the contingency plan, if new control measures are needed, then the adoption process will begin within 12 months and final adoption will be completed within 18 months of the triggering event (*i.e.,* a monitored violation of the $PM_{2.5}$ NAAQS). The State would require compliance with new control measures within six months of final adoption of the contingency measures.

[106] Our conclusion is further supported by the meteorological data (TSD, 17–24) and chemical speciation data (Plan, 44) that ADEQ has presented.

[107] Calcagni memo, 11.

[108] Id.

[109] Nogales Maintenance Plan, 46, Section 5.4.

[110] Id. at 45–46.

[111] 81 FR 68216 (October 3, 2016).

The Nogales Maintenance Plan includes a list of contingency measures considered for implementation if the contingency plan is triggered focusing on the principal source categories contributing to $PM_{2.5}$ emissions in the Nogales area.[112] The source categories include stationary sources, fugitive dust sources, and residential wood burning devices. In addition to the contingency plan, ADEQ commits to initiate a review of VPP operations to reduce emissions and implement control measures, as needed, if the facility's direct $PM_{2.5}$ emissions exceed 20 percent of PTE as shown in the VPP annual facility emissions report.[113]

From our review, we find that the State has established a contingency plan for the Nogales area that clearly contains the following: (1) Tracking and triggering mechanisms to determine when contingency measures are needed; (2) a description of the process for developing and implementing contingency measures; (3) specific timelines for action; and (4) identifies specific source categories for review, including a specific review process and trigger for the VPP facility. Thus, we propose to conclude that the contingency provisions of the Nogales Maintenance Plan are adequate to ensure prompt correction of a NAAQS violation and satisfy the requirements of the CAA section 175A(d).

5. Transportation Conformity and Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not cause or contribute to violations of the NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in all control strategy SIPs and maintenance plans.[114]

These control strategy SIPs and maintenance plans typically set budgets for criteria pollutants and/or their precursors to address pollution from cars and trucks. Budgets are established for specific years and specific pollutants or precursors and must reflect the motor vehicle control measures contained in the RFP plan and the attainment or maintenance demonstration. Under the transportation conformity rule, budgets must be established for the last year of the maintenance plan for direct $PM_{2.5}$ and $PM_{2.5}$ precursors subject to transportation conformity analyses.[115]

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria.[116] To meet these requirements in maintenance plans, the budgets must be consistent with the maintenance requirements and reflect all the motor vehicle control measures contained in the maintenance demonstration.[117] The EPA's process for determining adequacy of a budget consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and (3) making a finding of adequacy or inadequacy.[118]

Within the Nogales Maintenance Plan, ADEQ described the process the State followed for developing the budgets and has enumerated a budgets for the Nogales area.[119] The 2032 conformity budgets for $PM_{2.5}$ and NO_X for the Nogales area are provided in Table 7 on a pounds per day basis consistent with the maintenance demonstration emissions inventories discussed this proposal. Because the Nogales area experiences high volumes of commercial trucking crossing the international border with Mexico, ADEQ included a NO_X budget because NO_X emissions are a mobile source related $PM_{2.5}$ precursor. ADEQ did not include emissions from road construction and maintenance. Upon reviewing the emissions inventories, the State determined that road construction and maintenance emissions were de minimis and unlikely to cause or contribute to violations of the 24-hour $PM_{2.5}$ NAAQS.[120]

TABLE 7—2032 MOTOR VEHICLE EMISSIONS BUDGETS FOR THE NOGALES AREA

[Pounds per winter day]

Source	$PM_{2.5}$ emissions	NO_X emissions
Direct On-Road Mobile Sources (exhaust, tire and brake wear)	8.2	513.0
Paved Road Fugitive Dust	77.8	.....
Unpaved Road Fugitive Dust	551.0	.....
Totals	637.0	513.0

Source: Plan, 51, 52; Tables 6–3 and 6–4.

[112] Nogales Maintenance Plan, 47.

[113] Id. at 47–48.

[114] Control strategy SIPs refer to RFP and attainment demonstration SIPs. 40 CFR 93.101.

[115] Section 93.102(b)(2)(iii) of the conformity rule identifies VOC and NO_X as PM_{10} precursor pollutants that are presumed insignificant unless the SIP makes a finding that the precursor is significant.

[116] 40 CFR 93.118(e)(4).

[117] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: *https://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[118] 40 CFR 93.118(f)(2).

[119] Nogales Maintenance Plan, 49–52.

[120] Id. at 50.

Table 8 shows the 2032 budgets provided by ADEQ on a tons per year basis, consistent with the annual emissions inventories.[121]

TABLE 8—2032 MOTOR VEHICLE EMISSIONS BUDGETS FOR THE NOGALES AREA

[Tons per year]

Source	$PM_{2.5}$ emissions	NO_X emissions
Direct On-Road Mobile Sources (exhaust, tire and brake wear)	1.4	93.7
Paved Road Fugitive Dust	14.2	.....
Unpaved Road Fugitive Dust	100.6	.....
Total	116.2	93.7

Source: Plan, 51, 52; Tables 6–3 and 6–4.

ADEQ provided the methodologies to develop the motor vehicle emissions budgets in the TSD and appendices C and D of the Plan. As discussed in section III.D of this proposal, ADEQ used the EPA's MOVES2014b model in the development of these budgets; this was the latest available version of the model at the time the Nogales Maintenance Plan was developed. Paved road VMT estimates for estimating direct and fugitive $PM_{2.5}$ emissions were provided by and in consultation with ADOT using an interpolation methodology where 2017, 2026, and 2032 VMT were estimated from Nogales area traffic data.[122] ADEQ used the most recent AP–42 emissions factor equations from the EPA and National Emissions Inventory data to develop paved and unpaved road fugitive dust emissions estimates.[123]

As part of our review of the approvability of the motor vehicle emissions budget in the Nogales Maintenance Plan, we have evaluated the budgets using the adequacy criteria specified in the transportation conformity rule.[124] First and foremost, Section 93.118(e)(4)(iv) requires that a budget, when considered together with all other emissions sources, be consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to a given implementation plan submission). In this case, the Nogales area budget is consistent with the requirements for maintenance, as discussed in Sections III.D of this proposal. Second, the Nogales budget is presented in a daily format consistent with a maintenance plan intended to meet the 24-hour $PM_{2.5}$ NAAQS, as well as an annual and tons per year basis consistent with the emissions inventories. Third, Section 93.118(e)(4)(iii) requires that the budget be clearly identified and precisely quantified. ADEQ has done so in Section 6.3.3 of the Plan. Fourth, ADEQ developed the budgets in consultation with ADOT, the regional transportation agency for the Nogales area. Lastly, prior to their submission to the EPA, ADEQ submitted the budgets for public inspection and comment as discussed in Section II.B of this proposal.

We have reviewed the motor vehicle emissions budgets in the Nogales Maintenance Plan and find that they meet applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5). We will complete the adequacy review concurrent with our final action on the Nogales Maintenance Plan. The EPA is not required under the transportation conformity rule to find budgets adequate prior to our proposing approval of them.[125] In this proposed rule, the EPA is announcing that the adequacy process for these budgets begins, and the public has 30 days to comment on the budgets presented here and in the Nogales Maintenance Plan.[126]

While a finding of adequacy and approval are two separate actions, reviewing the budgets for their adequacy against the criteria in the transportation conformity rule informs the EPA's decision to propose approval of the budgets. We have completed our detailed review of the Nogales Maintenance Plan and are proposing herein to approve the maintenance demonstration in section III.D, and we have reviewed the budgets in the Nogales Maintenance Plan and find that they are consistent with this maintenance demonstration. Furthermore, the budgets are based on control measures that have been adopted and implemented, and they meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.1118(e)(4) and (5). Therefore, we are proposing to approve the 2032 maintenance year budgets in the Nogales Maintenance Plan. We may either finalize the adequacy process and find the budgets adequate for the purposes of transportation conformity or approve the budgets for the 24-hour $PM_{2.5}$ NAAQS in the Nogales area as proposed, whichever occurs first. We may also finalize an adequacy finding and approval of the budgets in our final action on the Nogales Maintenance Plan, per 40 CFR 93.118(f)(2)(iii).

IV. Environmental Justice Considerations

Executive Order 12898 requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations.[127] Additionally, Executive Order 13985 directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups,[128]

[121] It should be noted that a transcription error occurred in Table 6–3 of the Plan where the figures for paved and unpaved road emissions were inadvertently switched, each for the other in the tons per day column. Table 8 reflects the correct tons per year assignment consistent with the pounds per day figures and the annual emissions inventories figures.

[122] TSD, 46–48, Section 5.3; TSD, 60 61, Section 6.3.

[123] ADEQ used the appropriate AP–42 guidance in sections 13.2.1 and 13.2.2 to calculate fugitive dust from paved and unpaved roads. The AP–42 emission factor equation inputs for estimating paved and unpaved road fugitive dust emissions can be found in Appendices C and D of the Plan. The most recent EPA revision and approval of these AP–42 emission factor equations occurred in 2011 and are reflected in the Plan's estimates; 76 FR 6328 (February 4, 2011).

[124] 40 CFR 93.118(e)(4) and (5).

[125] Under the transportation conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

[126] 40 CFR 93.118(f)(2)(i) and (ii).

[127] 59 FR 7629 (February 16, 1994).

[128] 86 FR 7009 (January 25, 2021).

and Executive Order 14008 directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.[129] To identify environmental burdens and susceptible populations in underserved communities in the Nogales area, we performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[130] Our screening-level analysis indicates that the Nogales area scores high when compared to the national average for the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898.[131] As discussed in the EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[132] Underserved communities can also experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility.

As discussed in section III.A, the Nogales area meets the health-based 2006 $PM_{2.5}$ 24-hour NAAQS of 35 μg/m^3 based on the 2018–2020 design value and continues to meet the NAAQS based on preliminary data for 2021. This proposed action would redesignate the Nogales area to attainment. Redesignation to attainment would not, in and of itself, create any new requirements. Rather, it would result in the applicability of requirements already contained in the CAA for areas that have been redesignated to attainment. Thus, we believe that our proposed action will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

V. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons presented above, the EPA is proposing to approve the Nogales Maintenance Plan submitted by ADEQ on April 13, 2021, as a revision to the Arizona SIP. In doing so, we are proposing to approve the maintenance demonstration and contingency provisions as meeting all of the applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, and to approve the motor vehicle emissions budgets and find that these budgets are adequate.

In addition, under CAA section 107(d)(3)(D), we are proposing to approve Arizona's request to redesignate the Nogales area from nonattainment to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. We are doing so based on our conclusion that the State has met all the criteria for redesignation under CAA section 107(d)(3)(E). Specifically, we propose to make the following findings:

- The Nogales area has attained the 24-hour $PM_{2.5}$ NAAQS based on the most recent three-year period (2018–2020) of quality-assured, certified, and complete $PM_{2.5}$ data;
- The relevant portions of the Arizona SIP are fully approved;
- The improvement in Nogales area ambient air quality is due to permanent and enforceable reductions in direct and precursor $PM_{2.5}$ emissions;
- Arizona has met all requirements applicable to the Nogales area with respect to section 110 and part D of the CAA; and
- The Nogales area has a fully approved maintenance plan meeting the requirements of CAA section 175A, including motor vehicle emissions budgets for the year 2032.

We are soliciting comments on these proposed actions. We will accept comments from the public for 30 days following publication of this proposal in the **Federal Register** and will consider any relevant comments before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographic area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. Redesignation to attainment does not in and of itself create any new requirements, but rather, results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices provided they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve a state plan and redesignation request as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, the proposed actions:

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

[129] 86 FR 7619 (February 1, 2021).

[130] ''EJScreen for NogalesAZ NAA 2006 FinePM NAAQS 18Jan2022.xlsx'' in the docket for this proposal. The EPA used EJSCREEN to obtain environmental and demographic indicators representing the Nogales area. EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators and is available at *https://www.epa.gov/ejscreen/what-ejscreen.*

[131] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, lead paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). Depending on the indicator, a community that scores highly for an indicator may have a higher percentage of its population within a demographic group or a higher average exposure or proximity to an environmental health hazard compared to the state, region, or national average. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2, September 2019.

[132] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4, June 2016.

• Will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), as discussed in Section IV of this proposal.

In addition, there are no areas of Indian country within the Nogales area, and the State plan for which the EPA is proposing approval does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of NAAQS in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: February 18, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–04070 Filed 3–1–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220224–0057]

RIN 0648–BL06

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 9

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to approve and implement Framework Adjustment 9 to the Atlantic Herring Fishery Management Plan. This proposed rule would establish a rebuilding plan for herring, adjust accountability measure catch threshold triggers when catch exceeds a herring annual catch limit or management area sub-annual catch limit, and revise existing regulations to clarify area closure and possession limit restrictions and add prohibitions that were inadvertently omitted from previous management actions. This action is necessary to respond to updated scientific information and to achieve the goals and objectives of the fishery management plan. The proposed measures are intended to help prevent overfishing, rebuild the overfished herring stock, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Public comments must be received by March 17, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2022–0021, by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0021 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method 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. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of Framework 9, including the Environmental Assessment (EA) and the Regulatory Impact Review (RIR) prepared by the New England Fishery Management Council in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at *https://www.nefmc.org/management-plans/herring* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196, *Maria.Fenton@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart K. The herring fishery is managed using annual catch limits (ACL) and Management Area sub-ACLs, possession limits, gear restrictions, and seasonal sub-ACL periods. In-season accountability measures (AM), including possession limit reductions and fishery closures, help ensure catch does not exceed the ACL or sub-ACLs. Reactive AMs require that when total catch exceeds an ACL or sub-ACL, the amount of the overage is deducted from the applicable sub-ACL and ACL in a subsequent fishing year.

The Northeast Fisheries Science Center (NEFSC) completed the most recent Management Track Assessment of the Atlantic herring stock in June 2020. The draft assessment summary report is available on the NEFSC website (*https://apps-nefsc.fisheries.noaa.gov/saw/sasi/sasi_report_options.php*). The assessment indicated that the stock is not subject to overfishing, but is now overfished. This represents a change from the 2018 assessment, which indicated that the stock was not subject to overfishing and was approaching an overfished condition. The 2020 assessment also indicated that herring recruitment continues to be at historic low levels. Based on these findings, NMFS notified the New England Fishery Management Council in October 2020 that it must prepare and implement a new

rebuilding plan for herring. The deadline to implement this rebuilding plan is October 13, 2022.

The Council developed Framework 9 to implement a herring rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action also includes adjustments to AM catch threshold triggers when catch exceeds a herring ACL or sub-ACL, and revisions to clarify existing regulations. The Council submitted the amendment and draft Environmental Assessment (EA) to NMFS for review on November 10, 2021. The Council reviewed the proposed regulations in this proposed rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the MSA.

Proposed Measures

Under the MSA, NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The MSA requires NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the FMP, plan amendment, the MSA and its National Standards, and other applicable law. NMFS is proposing and seeking comment on the proposed measures in Framework 9, as recommended by the Council.

1. Herring Rebuilding Plan

When a stock is determined to be overfished, section 304(e)(3) of the MSA requires the appropriate Council to prepare and implement a fishery management plan, plan amendment, or proposed regulations to end overfishing immediately in the fishery and to rebuild the affected stock. Section 304(e)(4) of the MSA requires that the rebuilding plan shall be as short as possible, taking into account the status and biology of any overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. The rebuilding plan must rebuild the stock within 10 years.

The Council considered a range of rebuilding plan alternatives during the development of Framework 9: No rebuilding plan (Alternative 1); a rebuilding plan that would set fishing mortality targets according to the Council's acceptable biological catch (ABC) control rule (Alternative 2); and a rebuilding plan that would set fishing mortality targets based on a constant fishing mortality rate (F) (Alternative 3) (Table 1). Alternative 2 reflects the Council's harvest policy for herring, and Alternative 3 was intended to mitigate negative socioeconomic impacts while the stock rebuilds. The Council also considered but rejected Alternative 3A, which would set fishing mortality targets based on a constant mortality rate that was lower than the constant rate in Alternative 3. Alternative 3A was intended to provide the Council with an alternative that would provide higher 2023 catch limits than Alternative 2 in order to support the fishery and its accompanying infrastructure, but a more conservative F than Alternatives 2 or 3 for the duration of the rebuilding period in recognition of recent low recruitment. The Council ultimately selected Alternative 2, which would continue the ABC control rule currently used in setting herring specifications. The rationale for the Council's decision is provided below.

TABLE 1—SUMMARY OF REBUILDING ALTERNATIVES IN FRAMEWORK 9

Rebuilding alternatives	Fishing mortality rate (F)	Rebuilding period
No Action (*Alternative 1*)	Biomass-Based (0.09 to 0.43)	None.
Alternative 2 (*ABC control rule*)	Biomass-Based (0.09 to 0.43)	5 years.
Alternative 3	Constant (0.48)	7 years.

Consistent with the 2020 assessment, each rebuilding alternative assumes that future herring recruitment will resemble long-term average recruitment. Projections indicate that the herring stock can rebuild in the shortest amount of time under Alternative 2 (5 years; by fishing year 2026). Because recent recruitment has been historically low, the Herring Plan Development Team (PDT) explored rebuilding sensitivity analyses assuming a conservative recruitment estimate. Projections using the conservative recruitment estimate extend the rebuilding period under Alternative 2 (from 5 years to 9 years) and lower F under Alternative 3 (from 0.48 to 0.36) to rebuild the stock in 7 years. Because Alternative 3A was added for consideration late in the development of Framework 9 and ultimately rejected, sensitivity analyses were not prepared for this alternative.

By continuing the use of the current ABC control rule under Alternative 2, this action would generate ABCs consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of maximum sustainable yield (MSY). During the development of the ABC control rule in Amendment 8, the Council discussed how to proceed with applying the rule if the herring stock became overfished. Amendment 8 provides that if the F derived from the ABC control rule is sufficient to meet rebuilding requirements, then the ABC control rule should be adhered to under a rebuilding plan. Additionally, recent low recruitment suggests that the long-term average recruitment assumption used to generate biomass projections may not reflect the current reality of the stock. Therefore, while projections suggest that there are not substantial differences in the overall performance of each alternative under consideration, the Council supported being more risk-averse in the current situation where herring biomass is estimated to be very low. Because of these reasons, the Council recommended implementing a rebuilding plan that would set ABCs consistent with the existing ABC control rule. This rulemaking proposes the Council's recommendations.

Under the ABC control rule, when biomass (B) is at or above 50 percent of the biomass that can support harvest of the maximum sustainable yield (B_{MSY}) or its proxy, ABC is the catch associated with an F of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, F declines linearly to 0 at 10 percent of B_{MSY} or its proxy. Under the proposed rebuilding plan, F would range from a low of 0.08 (fishing year 2023) to a high of 0.43 (fishing year 2026) based on current stock biomass projections. The ABC control rule allows for a maximum F of 0.43 because 0.43 is 80 percent of the current estimate of F_{MSY} (0.54).

The proposed rebuilding plan is expected to result in short-term negative impacts to the herring fishery due to low catch limits during the first several years of the rebuilding period. However, the long-term benefits of rebuilding the

herring stock as quickly as possible and stabilizing the fishery are expected to outweigh these short-term economic costs. The proposed rebuilding plan would not result in any changes to the fishing year 2022 ABC, so the specifications that the fishery is currently operating under would not be disrupted. Additionally, other industries that rely on herring predators also need to be considered when examining the socioeconomic impacts of the rebuilding plan. The ABC control rule explicitly accounts for herring as forage in the ecosystem by limiting F to 80 percent of F_{MSY} when biomass is high and setting it at 0 when biomass is low.

2. Adjustments to Accountability Measure Catch Threshold Triggers

The Council recommended adjustments to the AM catch threshold triggers when a herring ACL or Management Area sub-ACL is exceeded. Currently, herring regulations at § 648.201(a)(3) require that if NMFS determines that total catch exceeded the ACL or a sub-ACL in a given fishing year, we will subtract the amount of the overage from the ACL and respective sub-ACL in the fishing year following total catch determination. Framework 9 proposes adjusting the AM catch threshold triggers so that an overage of a sub-ACL in one fishing year would only be deducted in a subsequent fishing year if the overage exceeded 10 percent of the sub-ACL; and/or if the ACL was also exceeded. Additionally, if a sub-ACL was exceeded by more than 10 percent and the ACL was not also exceeded, only the portion of the sub-ACL overage above 10 percent would be deducted from the appropriate sub-ACL in a subsequent fishing year.

Under these proposed regulations, the following overage scenarios would be possible:

- If catch exceeds a sub-ACL by 10 percent or less but does not exceed the ACL in a given fishing year, then NMFS would not deduct any amount of the overage from the applicable sub-ACL or ACL in the fishing year following total catch determination.
- If catch exceeds a sub-ACL by more than 10 percent but does not exceed the ACL in a given fishing year, then NMFS would subtract the amount of the overage above 10 percent from the applicable sub-ACL and ACL in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent in a given fishing year and the ACL was not exceeded, the amount equal to the 5 percent overage would be deducted from the ACL and Area 1A sub-ACL in the fishing year following total catch determination.
- If catch exceeds a sub-ACL by any amount and also exceeds the ACL in a given fishing year, then NMFS would subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in a given fishing year, the amount equal to the 15-percent overage would be deducted from the Area 1A sub-ACL and the amount equal to the 5-percent overage would be deducted from the ACL in the fishing year following total catch determination.
- If catch exceeds the ACL but does not exceed any sub-ACLs were exceeded in a given fishing year, then NMFS would subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeded the herring ACL by 2 percent in a given fishing year and no sub-ACLs were exceeded, the amount equal to the 2-percent overage would be deducted from the ACL only in the fishing year following total catch determination.

These proposed adjustments to the AM catch threshold triggers are intended to increase access to harvest and help offset the negative economic impacts of relatively small sub-ACL overages, which could occur given recent low catch limits and the high volume nature of the herring fishery. They are not expected to adversely affect the stock or the fishery management plan's area management program, while still preventing overharvesting of any individual stock components.

3. Revisions and Clarifications to Existing Regulations

This proposed rule includes additional revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions were not adopted by the Council under Framework 9 but are being implemented consistent with section 305(d) of the MSA, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. The revisions at § 648.13(f)(1)(ii)(B), (f)(2), (f)(5), and (f)(6) clarify that vessels are not allowed to catch or transfer at sea more than 40,000 lb (18,143.7 kg) of herring per trip or calendar day if the vessel is in, or the fish were harvested from, a management area subject to a 40,000-lb (18,143.7 kg) herring possession limit. The revisions at § 648.14(r)(1)(ii)(B) clarify that it is unlawful for any person to land or attempt to land more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure. The addition of paragraph § 648.14(r)(1)(iv)(F) clarifies that is it unlawful for any person to purchase, receive, possess, have custody of, sell, barter, trade or transfer more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring, or attempt to do any of these things, from a management area subject to a herring possession limit pursuant to § 648.201(a). The revisions at § 648.14(r)(1)(vii)(A) clarify that vessels may not transit or be in a management area subject to a possession limit adjustment or fishery closure with more than the applicable herring possession limit, unless such herring were caught in an area not subject to the possession limit, all fishing gear is stowed and not available for immediate use, and the vessel is issued the appropriate herring permit. The revision at § 648.201(a)(1)(i) changes the paragraph heading from ''Management area closure'' to ''Possession limit adjustments.'' The revisions at § 648.201(a)(1)(i)(A), (a)(2)(i)(B)(1), (a)(1)(i)(B)(2), (a)(1)(ii), (a)(2), and (a)(4)(ii) update possession limit adjustment language to be consistent with§ 648.201(a)(1)(i), and clarify that vessels may not fish for, possess, transfer, receive, land, or sell more than the applicable possession limits described in those paragraphs, or attempt to do any of these things. The revisions at § 648.201(b) and (c) correct typos by changing ''less than'' to ''greater than.'' The revisions at § 648.201(g)(1) update the language used in the carryover example to clarify the timing of when carryover is applied and how it is calculated. The final revision removes paragraph § 648.201(g)(2) because the carryover provisions contained within only applied to fishing years 2021 and 2022 and are therefore no longer necessary. The Council concurs with these revisions.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed action is consistent with the Atlantic Herring FMP, provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed action has been preliminarily determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed action does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

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 action, if adopted, would not have a significant economic impact on a substantial number of small entities. More information on this determination is provided below.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. This proposed action would affect all vessels with permits to fish in the herring fishery; therefore, the direct regulated entity is a firm that controls at least one herring permit. In 2020, there were 9 large and 1,213 small firms that met this criteria. A firm was included if it owned at least one category A, B, C, D, or E Herring Permit on July 1, 2021. The nine large firms earned a combined $189 million in fishing revenue (an average of about $21 million per large firm) over the trailing 3 years. About $2 million of that revenue (an average of about $225,000 per large firm) was derived from herring. The 1,213 small entities earned a combined $655 million in fishing revenue (an average of about $540,000 per small firm). About $11 million of that revenue (an average of about $9,000 per small firm) was derived from herring.

Many of the direct regulated entities described above hold an open access category D herring permit and no other herring permit. Impacts of the proposed rule are likely to be largest for the participants holding at least one category A, B, C, or E herring permit. In 2020, there were 6 large and 97 small firms that met this criteria. The six large entities earned a combined $129 million in fishing revenue (an average of about $21.5 million per large firm) over the trailing 3 years. About $2 million of that revenue (an average of about $333,000 per large firm) was derived from herring. The 97 small entities earned a combined $131 million in fishing revenue (an average of about $1.4 million per small firm). About $11 million of that revenue (an average of about $111,000 per small firm) was derived from herring.

Some of the firms described in the previous section are not active in the herring fishery, despite holding a category A, B, C, or E herring permit. For the purposes of this analysis, ''active'' is defined as deriving any revenue from herring in 2020. The measures proposed in this action are likely have the largest impact on vessels that are active in the herring fishery. In 2020, there were 2 large and 29 small entities that meet these criteria. The 29 active small entities earned a combined $31.99 million in fishing revenue (an average of about $1.18 million per active small firm). About $10.65 million of that revenue (an average of about $394,000 per active small firm) was derived from herring. Analyses indicate that, relative to the baseline, the economic impacts to both small and large firms resulting from the proposed measures are expected to be positive. Under the proposed rule, gross receipts are expected to increase by $26,000 for large firms (an average of about $2,900 per firm) and $134,000 for small firms (an average of about $110 per firm). Most of the additional revenue that is expected to result from the implementation of the proposed rule would accrue to small firms; however, the increase in gross receipts from fishing is quite small in magnitude. NMFS assumes that additional revenue would be distributed across firms in such a way that the gross receipts of the inactive firms would not increase.

Because this action would either continue the use of the existing ABC control rule for specification-setting practices or allow for a slight increase in fishing opportunities and revenues, in combination with adjustments to AM catch threshold triggers, this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new information collection requirements, including reporting or recordkeeping requirements, contained in this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 24, 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 § 648.13, revise paragraphs (f)(1)(ii)(B), (f)(2)(ii), and (f)(5) and (6) to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(2) * * *

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

* * * * *

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area

subject to a possession limit adjustment or fishery closure as specified in § 648.201.

* * * * *

■ 3. In § 648.14:

■ a. Revise paragraph (r)(1)(ii)(B);

■ b. Add paragraph (r)(1)(iv)(F); and

■ c. Revise paragraph (r)(1)(vii)(A).

The revisions and addition read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(B) Attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell, more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure, or from a river herring and shad catch cap closure area that has been closed to specified gear pursuant to § 648.201(a)(4)(ii), if the vessel has been issued and holds a valid herring permit.

* * * * *

(iv) * * *

(F) Purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, or attempt to purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring from a management area subject to a possession limit for Atlantic herring pursuant to § 648.201(a).

* * * * *

(vii) * * *

(A) Transit or be in an area subject to a possession limit adjustment or fishery closure pursuant to § 648.201(a) with more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring, unless such herring were caught in an area not subject to the 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) limit specified in § 648.201(a), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

* * * * *

■ 4. In § 648.201:

■ a. Revise the paragraphs (a)(1)(i) heading

■ b. Revise paragraphs (a)(1)(i)(A), (a)(1)(i)(B)(*1*) and (*2*), (a)(1)(ii), and (a)(2) and (3);

■ c. Revise paragraphs (a)(4)(ii), (b), (c), and (g)(1); and

■ d. Remove and reserve paragraph (g)(2).

The revisions read as follows:

§ 648.201 AMs and harvest controls.

(a) * * *

(1) * * *

(i) *Possession Limit Adjustments*—(A) *Areas 1A and 1B Possession Limit Adjustment.* If NMFS projects that catch from Area 1A or 1B will reach 92 percent of the annual sub-ACL allocated to Area 1A or Area 1B, before the end of the fishing year, or 92 percent of the Area 1A sub-ACL allocated to the seasonal period as set forth in paragraph (d) of this section, beginning the date the catch is projected to reach 92 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(B) * * *

(*1*) *Possession Limit Adjustment—Phase 1.* If NMFS projects that catch from Area 2 or Area 3 will reach 90 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 90 percent of the applicable sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 40,000 lb (18,143.7 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(*2*) *Possession Limit Adjustment—Phase 2.* If NMFS projects that catch will reach 98 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 98 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, beginning the date the catch is projected to reach 95 percent of the ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.90(a)(4)(iii)(D) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, *i.e.,* the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(*2*) and (*3*), may fish for, possess, transfer, receive, land, or sell herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel's gear is not available for immediate use as defined in § 648.2 while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

(3) *ACL and sub-ACL overage deductions.* (i) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by 10 percent or less and the ACL was not exceeded in a given fishing year, then NMFS shall not deduct any amount of the overage from the applicable sub-ACL or ACL in the fishing year following total catch determination.

(ii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by greater than 10 percent and the ACL was not exceeded in a given fishing year, then NMFS shall subtract the amount of the overage above 10 percent from the ACL and applicable sub-ACL in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent in Year 1 and the ACL was not exceeded, the amount equal to the 5 percent overage would be deducted from the ACL and Area 1A sub-ACL in Year 3.

(iii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by any amount and the ACL was also exceeded in a given fishing year, then NMFS shall subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in Year 1, the amount equal to the 15-percent overage would be deducted from the Area 1A sub-ACL and the amount equal to the 5-percent overage would be deducted from the ACL in Year 3.

(iv) If NMFS determines that total catch exceeded the Atlantic herring ACL and no herring sub-ACLs were exceeded in a given fishing year, then NMFS shall subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeded the herring ACL by 2 percent in Year 1, the amount equal to the 2-percent overage would be deducted from the ACL in Year 3, and no sub-ACLs would be reduced.

(v) NMFS shall make overage determinations and implement any changes to ACLs or sub-ACLs, through notification in the **Federal Register**, and if possible, prior to the start of the fishing year during which the reduction would occur.

(4) * * *

(ii) Beginning on the date that NMFS projects that river herring and shad catch will reach 95 percent of a catch cap for specified gear applicable to an area specified in § 648.200(f)(7) for the remainder of the fishing year, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip using the applicable gear in the applicable catch cap closure area, specified in § 648.200(f)(8), and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

* * * * *

(g) * * *

(1) Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for Year 1, not the sub-ACL for Year 1 as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring caught from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 100 mt of herring is added as carryover from Year 1 to a 5,000 mt sub-ACL in Year 3, catch in that management area would be tracked against a total sub-ACL of 5,100 mt. NMFS shall add sub-ACL carryover only if catch does not exceed the Year 1 ACL, specified consistent with § 648.200(b)(3). The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

* * * * *

[FR Doc. 2022–04294 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 41
Wednesday, March 2, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Pesticide Residues

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on June 2, 2022. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 53rd Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (CAC), which will convene virtually, July 4–July 13, 2022. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 53rd Session of the CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for June 2, 2022, from 2:00–4:00 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 53rd Session of the CCPR will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCPR&session=53.* Captain David Miller, U.S. Delegate to the 53rd Session of the CCPR, invites U.S. interested parties to submit their comments electronically to the following email address: *miller.davidj@epa.gov.*

Registration: Attendees must register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJItc-6tpzgjHHHmxmTPl2ykA0BfwK2icPQ.* After registering, you will receive a confirmation email containing information about joining the meeting.

For Further Information about the 53rd Session of the CCPR, contact U.S. Delegate, Captain David Miller, *miller.davidj@epa.gov,* +1 (703) 305–5352.

For Further Information about the public meeting Contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone (202) 720–7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Pesticide Residues (CCPR) are:

(a) To establish maximum limits for pesticide residues in specific food items or in groups of food;

(b) to establish maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health;

(c) to prepare priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR);

(d) to consider methods of sampling and analysis for the determination of pesticide residues in food and feed;

(e) to consider other matters in relation to the safety of food and feed containing pesticide residues; and,

(f) to establish maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The CCPR is hosted by China. The United States attends the CCPR as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 53rd Session of the CCPR will be discussed during the public meeting:

- Adoption of the Agenda
- Appointment of Rapporteurs
- Matters referred to CCPR by CAC and/or other Codex subsidiary bodies
- Matters of interest arising from FAO and WHO
- Matters of interest arising from other international organizations
- Report on items of general consideration arising from the 2021 JMPR regular meeting
- Report on responses to specific concerns raised by CCPR arising from the 2021 JMPR regular meeting
- Proposed Maximum Residue Limits (MRLs) for pesticides in food and feed
- Revision of the *Classification of Food and Feed* (CXM 4/1989) on the following:

(i) The issue of okra and an appropriate representative commodity, taking into account monitoring data submitted.

(ii) work on edible animal tissues (including edible offal) in collaboration with the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) Electronic Working Group (EWG) on edible offal.

(iii) consideration of Class B, Primary Food Commodities of Animal Origin and Class E, Processed Foods of Animal Origin.

- Proposed Draft Guidelines for compounds of low public health concern that could be exempted from the establishment of Codex maximum residue limits for pesticides (CXLs)
- Discussion Paper on the review of mass spectrometry provisions in the *Guidelines on the Use of Mass Spectrometry for the Identification, Confirmation and Quantitative Determination of Pesticide Residues* (CXG 56–2005) and the *Guidelines on Performance Criteria of Pesticide Residues in Food and Feed* (CXG 90–2017)
- Discussion paper on monitoring the purity and stability of certified reference material of multi-class pesticides during prolonged storage
- Discussion paper on engagement of JMPR in parallel reviews of new compounds

- Discussion paper on the management of unsupported compounds without public health concerns scheduled for periodic review by JMPR
- National registrations of pesticides (National Registration Database for Pesticides for Periodic Review by JMPR)
- Establishment of CCPR Schedules and Priority Lists for the evaluation of pesticides by JMPR

Public Meeting

At the June 2, 2022, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Captain David Miller, U.S. Delegate for the 53rd Session of the CCPR (see **ADDRESSES**). Written comments should state that they relate to activities of the 53rd Session of the CCPR.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *https://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, American Sign Language, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–04342 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2022 Economic Census

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 27, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: 2022 Economic Census.

OMB Control Number: 0607–0998.

Stateside Electronic Path ID(s): The paths in the electronic instrument used to collect information are tailored to specific industries or groups of industries. The Electronic Path ID's are too numerous to list individually in this notice.

Island Areas Questionnaire Number(s)/Electronic Path ID(s): The questionnaires and paths in the electronic instrument used to collect information in the Islands Areas are tailored to specific industries or groups of industries. Electronic instruments are available in English. Puerto Rico paper questionnaires are available in English as well as Spanish.

Type of Request: Regular submission, Request for a Reinstatement, with Change, of a Previously Approved Collection.

Number of Respondents: 4,423,690.

Average Hours per Response: 1.37 hours.

Burden Hours: 6,064,840. (This burden estimate differs from that published in the August 27, 2021 **Federal Register** Notice due to updated and more detailed estimates of the likely number of respondents for each electronic questionnaire path as well as better estimates of the time required to complete the new electronic questionnaires.)

Needs and Uses: The 2022 Economic Census will compile statistics on an estimated 8.3 million employer business establishments in industries defined by the 2022 North American Industry Classification System (NAICS). Data on 4.7 million of these establishments will be obtained by direct data collection from an estimated 4.4 million respondents. Data from administrative records or imputation will be used for the remaining 3.6 million establishments—as well as for any contacted establishments that fail to respond. In addition to the general enumeration of businesses, the 2022 census program also includes surveys of business owners and commodity flows. Those surveys will be submitted separately.

This request for approval covers the information collection instruments and procedures that will be used in the enumeration of U.S. domestic businesses operating in the United States as well as the Island Areas of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

The public administration sector (*i.e.,* governments) is out of scope to the economic census. The U.S. Census Bureau conducts, and will submit separately for approval, the quinquennial census of governments and other current programs that measure the activities of government establishments.

The Island Areas component provides the only source of comprehensive data for the Island Areas at a geographic level similar to U.S. counties. It will produce basic statistics by industry for number of establishments, value of shipments/receipts/revenue/sales, payroll, and employment. It also will yield a variety of industry-specific statistics, depreciable assets, selected purchased services, inventories, and capital expenditures, value of shipments/receipts/revenue/sales by product line as defined by the North American Product Classification System (NAPCS),

size of establishments, and other industry-specific measures.

The 2022 Economic Census will cover the following NAICS sectors of the U.S. economy:

- Agriculture
- Mining, Quarrying, and Oil and Gas Extraction
- Utilities
- Construction
- Manufacturing
- Wholesale Trade
- Retail Trade
- Transportation and Warehousing
- Information
- Finance and Insurance
- Real Estate and Rental and Leasing
- Professional, Scientific and Technical Services
- Management of Companies and Enterprises
- Administrative and Support and Waste Management and Remediation Services
- Educational Services
- Health Care and Social Assistance
- Arts, Entertainment, and Recreation
- Accommodation and Food Services
- Other Services (except Public Administration).

The 2022 Economic Census will produce basic statistics by industry for the number of establishments, value of shipments/receipts/revenue/sales, payroll, and employment. It also will yield a variety of industry-specific statistics, including expenses, depreciable assets, selected purchased services, inventories, and capital expenditures, value of shipments/receipts/revenue/sales by product line as defined by the North American Product Classification System (NAPCS), type of operation, size of establishments, and other industry-specific measures.

All 2022 Economic Census draft questionnaire electronic instrument paths can be accessed at: *http://www.census.gov/programs-surveys/economic-census/information.html.*

The Economic Census is the primary source of information about the structure and functioning of the economies of the Nation and each Island Area and features the only recognized source of data at a geographic level similar to U.S. counties. Economic census statistics serve as part of the framework for the national accounts and provides essential information for government, business, and the general public. The Federal Government, governments of the Island Areas, Bureau of Economic Analysis (BEA), and the Bureau of Labor Statistics rely on the economic census as an important part of the framework for their income and product accounts, input-output tables, economic indices, and other composite measures that serve as the basis for economic policymaking, planning, and program administration. Further, the Economic Census provides sampling frames and benchmarks for current business surveys which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Business or other for-profit organizations; Farms.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code (U.S.C.). Sections 131, 191 and 224.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0998.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–04352 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–70–2021]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Authorization of Production Activity; Aker Solutions, Inc.; (Subsea Oil and Gas Systems) Mobile, Alabama

On October 28, 2021, Aker Solutions, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 82, in Mobile, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 60791, November 4, 2021). On February 25, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 25, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–04375 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results and Preliminary Intent To Rescind, in Part, the Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain exporters/producers of certain cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR), January 1, 2020, through December 31, 2020. Commerce preliminarily determines that the mandatory respondent, Hyundai Steel Company (Hyundai Steel), received *de minimis* net countervailable subsidies during the POR. Commerce preliminarily determines that Dongkuk Steel Mill Co., Ltd. (DSM), which was not individually examined in this review, received net

countervailable subsidies. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 2, 2022.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2483.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, Commerce published in the **Federal Register** the countervailing duty (CVD) order on CTL plate from Korea.[1] On February 2, 2021, Commerce published in the **Federal Register** its initiation of the CVD administrative review of the *Order* for the period of January 1, 2020, to December 31, 2020.[2] On June 3, 2021, Commerce selected Hyundai Steel as the sole mandatory respondent in this administrative review.[3]

On October 1, 2021, Commerce extended the deadline for issuance of the preliminary results of this review by 117 days, until February 25, 2022, in accordance with 19 CFR 351.213(h)(2).[4]

A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The product covered by this *Order* is certain cut-to-length carbon-quality steel plate. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Preliminary Intent To Rescind Administrative Review, in Part

Based on our analysis of U.S. Customs and Border Protection (CBP) data and comments received from interested parties, we preliminarily determine that two companies, BDP International and Sung Jin Steel Co., Ltd, had no reviewable shipments, sales or entries of subject merchandise during the POR.

Absent any evidence of shipments placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review. For further information, *see* ''Preliminary Intent to Rescind Administrative Review, in Part'' in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

To determine the rate for companies not selected for individual examination, Commerce's practice is to follow the instructions to calculate the all-others rate under section 705(c)(5) of the Act and weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[7] In this review, we preliminarily calculated a *de minimis* subsidy rate for the sole mandatory respondent (*i.e.,* Hyundai Steel) during the POR. In CVD proceedings, where the number of respondents being individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies that were not individually examined when all the rates of selected mandatory respondents are zero or *de minimis* is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available.[8] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to the non-selected respondent, even when that rate is zero or *de minimis.*[9]

In this case, Commerce calculated a company-specific rate for DSM in the administrative review covering 2018, while a more contemporaneous above *de minimis* rate of 0.56 percent was calculated in the most recently completed administrative review for Hyundai Steel, covering 2019. Therefore, consistent with Commerce's practice described above, we are assigning the rate of 0.56 percent *ad valorem,* calculated for Hyundai Steel in the most recently completed administrative review, to DSM.[10]

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020:

Company	Net countervailable subsidy rate (percent)
Hyundai Steel Company	0.26 (*de minimis*).
Dongkuk Steel Mill Co., Ltd	0.56.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), Commerce has

[1] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 17124 (April 1, 2021).

[3] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order of Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea; Respondent Selection,'' dated June 3, 2021.

[4] *See* Memorandum, ''Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Countervailing Duty Administrative Review; 2020: Extension of Deadline for Preliminary Results,'' dated October 1, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2020: Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[8] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018,* 85 FR 84296 (December 28, 2020).

[9] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review In Part; 2017,* 85 FR 3030 (January 17, 2020), unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017,* 85 FR 42353 (July 14, 2020).

[10] For additional information, *see Preliminary Decision Memorandum* at ''Non-Selected Rate.''

preliminarily assigned subsidy rates as indicated above. Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of this notice in the **Federal Register**.[11] Commerce intends to issue a post-preliminary analysis memorandum subsequent to the publication of this notice to address the new subsidy allegations submitted by the petitioner, Covid–19 fee reductions self-reported by Hyundai Steel, and whether to attribute any potential subsidies received by Hyundai Green Power to Hyundai Steel. Commerce will notify the parties to this proceeding of the deadlines for the submission of case and rebuttal briefs after the issuance of the post-preliminary analysis memorandum. Rebuttal briefs, limited to issues raised in case briefs, may be filed within seven days[12] after the time limit for filing case briefs. Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS.[15] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[16] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[17] Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by parties in their comments, within 120 days after the date of publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: February 23, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Preliminary Intent to Rescind Administrative Review, In Part
V. Non-Selected Rate
VI. Scope of the Order
VII. Subsidies Valuation Information
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2022–04355 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.224(b).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See Temporary Rule.*

[15] *See* 19 CFR 351.310(c).

[16] *Id.*

[17] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; North Pacific Observer Program

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 October 12, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: North Pacific Observer Program.

OMB Control Number: 0648–0318.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 875.

Average Hours per Response: Observer Notification: 2 minutes; Industry Request for Assistance in Improving Observer Data Quality Issues: 30 minutes; Pre-cruise meeting notification: 5 minutes; Catcher/processor request to be placed in Partial Observer Coverage: 30 minutes; Request to be placed in the Full Observer Coverage Category: 5 minutes; Request to be placed in or removed from the EM selection pool: 5 minutes; Observer Declare and Deploy System (ODDS) Log a fishing trip: 15 minutes; Deck Safety Plan—Initial Year: 12 hours; Deck Safety Plan—Annual Renewal: 1 hour; Deck Sorting Safety Meeting: 15 minutes; Vessel Monitoring Plan: 48

hours; Closing EM trips in ODDS: 5 minutes; Submit EM Data to NMFS: 1 hour; Observer Provider Permit Application: 60 hours; Candidate College Transcripts: 8 hours; Observer Training Registration: 1 hour; Observer Briefing Registration: 7 minutes; Projected Observer Assignments: 7 minutes; Physical Examination Verification: 5 minutes; Observer Deployment/Logistics Report: 7 minutes; Observer Debriefing Registration: 30 minutes; Certificates of Insurance: 12 minutes; Observer Provider Contracts: 30 minutes; Other Reports: 2 hours; Update to Provider Information: 5 minutes; Observer Provider Invoices: 30 minutes.

Total Annual Burden Hours: 16,030 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of a currently approved information collection that contains requirements for the North Pacific Observer Program (Observer Program). A slight revision is requested to change the title of the collection from ''Alaska Observer Program'' to ''North Pacific Observer Program.''

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the North Pacific Fishery Management Council (Council), in consultation with NMFS, to prepare a fishery research plan for the purpose of stationing observers and electronic monitoring (EM) systems to collect data necessary for the conservation, management, and scientific understanding of the commercial groundfish and Pacific halibut fisheries of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) management areas. The Observer Program is implemented by regulations at subpart E of 50 CFR part 679, which authorize the deployment of observers and EM to collect information necessary for the conservation and management of the BSAI and GOA groundfish and halibut fisheries. Under the Observer Program, observers and EM systems collect fishery-dependent information used to estimate total catch and interactions with protected species. Managers use this data to manage groundfish and prohibited species catch within established limits and to document and reduce fishery interactions with protected species. Scientists use this data to assess fish stocks, provide data for fisheries and ecosystem research and fishing fleet behavior, assess marine mammal interactions with fishing gear, and characterize fishing impacts on habitat.

All vessels and processors that participate in federally managed or parallel groundfish and halibut fisheries off Alaska (except catcher vessels delivering unsorted codends to a mothership) are subject to Observer Program requirements and assigned to one of two categories: (1) The full observer coverage category, where vessels and processors obtain observer coverage by contracting directly with observer providers; or (2) the partial coverage category, where NMFS, in consultation with the Council determines when and where observer coverage is needed. Some vessels and processors may be in full coverage for part of the year and partial coverage at other times of the year depending on the observer coverage requirements for specific fisheries. Funds for deploying observers on vessels in the partial coverage category are provided through a system of fees based on the gross ex-vessel value of retained groundfish and halibut. This observer fee is assessed on all landings by vessels that are not otherwise in full coverage. The observer fee is approved under OMB Control Number 0648–0711.

Information in this collection is submitted by observer provider companies and owners and operators of vessels and processors subject to Observer Program requirements. Information submitted by owners and operators includes information on owner identification, vessels, observer coverage category, deck safety, the EM system, fishing trips, and fishing operations. Information submitted by observer provider companies includes information on ownership and operations; observers and observer candidates; observer deployment; insurance coverage; contracts with observers, vessels, and processors; costs for observer services; and other information including possible observer harassment, prohibited actions, safety concerns, observer illness or injury preventing the observer from completing duties, and any information, allegation, or reports regarding observer conflict of interest or breach of the standards of behavior. Observers, observer provider companies, and industry may submit information on improving observer data quality and resolving observer sampling issues.

More information on the Observer Program is provided on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program.*

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: On Occasion; Weekly; Annually.

Respondent's Obligation: Voluntary; Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0318.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–04354 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Return Link Service Authorization in the United States Search and Rescue Region

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The U.S. Search and Rescue Satellite Aided Tracking (US SARSAT) Program, which is managed by NOAA and assisted by the National Aeronautics and Space Administration, the U.S. Air Force, and the U.S. Coast Guard, is announcing the authorization of the coding and use of Return Link Service equipped 406 MHz Satellite Personal Locator Beacons (PLBs) and 406 MHz Satellite Emergency Position Indicating Radio Beacons (EPIRBs) within the United States Search and Rescue Region.

FOR FURTHER INFORMATION CONTACT: SARSAT Program Analyst, Mr. Allan Knox, NOAA, *allan.knox@noaa.gov,* 301–817–4144.

Background: The US SARSAT Program requested input from all interested persons on the U.S.

authorization of Return Link Service (RLS) acknowledgment Type 1 capable Cospas-Sarsat 406 MHz distress beacons. Specifically, through Request for Information (RFI) notices published in the **Federal Register** on February 8, 2021 (86 FR 8598) and March 17, 2021 (86 FR 14595), the SARSAT Program sought the public's views on the inclusion of this optional RLS feature on U.S. country-coded beacons. The US SARSAT Program received 3 responses from the public to the RFI notices. Based on consideration of these responses, the addressing of several requirements requested by the U.S. Coast Guard and U.S. Air Force, and the update of the Standards for 406 MHz Satellite Personal Locator Beacons (PLBs) and 406 MHz Satellite Emergency Position Indicating Radio Beacons (EPIRBs), the US SARSAT Program is authorizing the coding and use of Return Link Service equipped PLBs and EPIRBS beacons within the United States Search and Rescue Region. These RLS enabled beacons will be legal for sale and use upon the publishing of Radio Technical Commission for Maritime services 11010.4 Standard for 406 MHz Satellite Personal Locator Beacons (PLBs). Due to the nature of their installation, RLS is currently not authorized for use in aviation Emergency Locator Transmitters.

Authority: 33 U.S.C. 883(d) and (e).

Dated: February 25, 2022.

Mark W. Turner,

SARSAT Program Manager.

[FR Doc. 2022–04369 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Southwest Fisheries Science Center Sea Turtle Sightings

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** during a 60-day comment period on December 6, 2021. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Commerce.

Title: Southwest Fisheries Science Center Sea Turtle Sightings.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular. New information collection.

Number of Respondents: 132.

Average Hours per Response: 5 minutes.

Total Annual Burden Hours: 11 hours.

Needs and Uses: NOAA's Southwest Fisheries Science Center (SWFSC) is sponsoring a new information collection under the Endangered Species Act for the purpose of collecting data on West Coast sea turtle sightings from members of the public. The data collected would include: Date of the sighting, time of the sighting, sea turtle species (if known), behavior, estimated size, geographic location, photos (if taken), and the public respondent's email address (used to ask follow-up questions if necessary). This information would be used by the SWFSC's Marine Turtle Ecology & Assessment Program to monitor the distribution and timing of sea turtle occurrence along the U.S. West Coast, which will accordingly support its mission to conserve and protect threatened and endangered sea turtle populations.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Endangered Species Act.

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. 2022–04353 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB836]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow four commercial surfclam and ocean quahog vessels to conduct at-sea paralytic shellfish poisoning testing in the Closed Area II scallop access area in statistical area 562. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 17, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''Sea Watch Surfclam EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION: Sea Watch is requesting exemption from the Georges Bank Closed Area specified at 50 CFR 648.76(a)(4). The proposed project would conduct at-sea testing for paralytic shellfish poisoning (PSP) in the Georges Bank Closed Area II Scallop Access area.

This Exempted Fishing Permit (EFP) would allow two commercial surfclam and ocean quahog vessels, using

hydraulic clam dredge gear, to conduct at-sea PSP testing in the Closed Area II Scallop Access Area in statistical area 562. The participating vessels are already certified for at-sea testing and are currently operating in the area opened on Georges Bank in 2012.

In 2008, before the open area of Georges Bank was approved, we issued an EFP for a single vessel with a harvest of 176,000 bushels (bu) of surfclams and 80,000 bu of ocean quahogs to determine if at-sea PSP testing was feasible in that area. The project now under consideration was designed to align with the original EFP that was issued to open the area of Georges Bank.

Vessels would take up to 60 trips to collect data on the presence, or lack thereof, of PSP-contaminated shellfish in the area. The project would also collect data on clam densities, shell size and landings per unit effort. No less than 10 percent of the trips would be covered by observers paid for by Sea Watch. Vessels would land up to 4,800 bu of surfclams or ocean quahogs per trip and all landings would be counted against the vessel's annual Individual Fishing Quota allocation. All landings would be handled under the current PSP protocol in place as mandated by the Food and Drug Administration and the Interstate Shellfish Sanitation Conference. A positive PSP result from any one sample would deem the area unacceptable for harvest. The vessel Captain would immediately report all positive screening test results, by telephone or email, to the Authority within the intended state of landing, the Food and Drug Administration (FDA) Shellfish Specialist, and the processor. The FDA would notify us and permitted vessels would stop fishing in the affected area(s).

Participating vessels would adhere to all seasonal groundfish closures in Closed Area II and would not retain any scallops while on EFP trips. Additionally, vessels must also adhere to all other requirements at § 648.76(a)(4)(i).

If approved, Sea Watch may request minor modifications and extensions to the EFP throughout the study. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: February 25, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–04393 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV186]

Space Weather Advisory Group Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Space Weather Advisory Group (SWAG) will meet for 2 half-days on March 17–18, 2022.

DATES: The meeting is scheduled as follows: March 17–18, 2022 from 10 a.m.–2 p.m. Eastern Standard Time (EST).

ADDRESSES: The public meeting will be conducted virtually via webinar. For details on how to connect to the webinar or to submit comments, please visit *www.weather.gov/swag* or contact Jennifer Meehan, National Weather Service; telephone: 301–427–9798; email: *jennifer.meehan@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Meehan, National Weather Service, NOAA, 1325 East-West Highway, Silver Spring, Maryland 20910; 301–427–9798 or *jennifer.meehan@noaa.gov;* or visit the SWAG website: *https://www.weather.gov/swag.*

SUPPLEMENTARY INFORMATION: Pursuant to the Promoting Research and Observations of Space Weather to Improve the Forecasting of Tomorrow (PROSWIFT) Act, 51 U.S.C. 60601 *et seq.,* the Administrator of NOAA and the National Science and Technology Council's Space Weather Operations, Research, and Mitigation (SWORM) Subcommittee established the Space Weather Advisory Group (SWAG) on April 21, 2021. The SWAG is the only Federal Advisory Committee that advises and informs the interest and work of the SWORM. The SWAG is to receive advice from the academic community, the commercial space weather sector, and nongovernmental space weather end users to carry out the responsibilities of the SWAG set forth in the PROSWIFT Act, 51 U.S.C. 60601 *et seq.*

The SWAG is directed to advise the SWORM on the following: Facilitating advances in the space weather enterprise of the United States; improving the ability of the United States to prepare for, mitigate, respond to, and recover from space weather phenomena; enabling the coordination and facilitation of research to operations and operations to research, as described in section 60604(d) of title 51, United States Code; and developing and implementing the integrated strategy under 51 U.S.C. 60601(c), including subsequent updates and reevaluations. The SWAG shall also conduct a comprehensive survey of the needs of users of space weather products to identify the space weather research, observations, forecasting, prediction, and modeling advances required to improve space weather products, as required by 51 U.S.C. 60601(d)(3).

I. Matters To Be Considered

The meeting will be open to the public. During the meeting, the Committee will discuss the PROSWIFT Act, 51 U.S.C. 60601 *et seq.,* directed duties of the SWAG including the required 51 U.S.C. 60601(d)(3) user survey. The full agenda will be published on the SWAG website. Meeting materials, including work products, will also be available on the SWAG website: *https://www.weather.gov/swag.*

II. Additional Information and Public Comments

The meeting will be held over two half-days and will be conducted via webinar (for meeting details see **ADDRESSES**). Please register for the meeting through the website: *https://www.weather.gov/swag.*

This event is accessible to individuals with disabilities. For all other special accommodation requests, please contact *Jennifer.meehan@noaa.gov.* This webinar is a NOAA public meeting and will be recorded and transcribed. If you have a public comment, you acknowledge you will be recorded and are aware you can opt out of the meeting. Participation in the meeting constitutes consent to the recording. Both the meeting minutes and presentations will be posted to the SWAG website (*https://www.weather.gov/swag).* The agenda, speakers and times are subject to change. For updates, please check the SWAG website (*https://www.weather.gov/swag).*

Public comments directed to the SWAG members and SWAG related topics are encouraged. Individuals or groups who would like to submit

advance written comments, please email them to *jennifer.meehan@noaa.gov* by March 11, 2022 to provide sufficient time for SWAG review. Written comments received after these dates will be distributed to the SWAG but may not be reviewed prior to the meeting date. As time allows, public comments will be read into the public record during the meeting. Advance comments will be collated and posted to the meeting website.

Dated: February 24, 2022.

Michael Farrar,

Director, National Centers for Environmental Prediction, National Weather Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–04364 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB662]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the South Carolina Aquarium. If granted, the EFP would authorize the South Carolina Aquarium to collect, with certain conditions, various species of snapper-grouper, Spanish mackerel, king mackerel, golden crab, dolphin, wahoo, Atlantic cobia, spiny lobster, and shrimp in the Federal waters off South Carolina and North Carolina in the South Atlantic. The specimens would be used in educational exhibits displaying native marine species at the South Carolina Aquarium located in Charleston, SC.

DATES: Written comments must be received on or before April 1, 2022.

ADDRESSES: You may submit comments, identified by ''NOAA–NMFS–2021–0131'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2021–0131'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method (including email), 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).

Electronic copies of the EFP application and related documents are available from the website at *https://www.fisheries.noaa.gov/southeast/south-carolina-aquarium-exempted-fishing-permit-application.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, 727–824–5305; email *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed specimen collection involves activities otherwise prohibited under the Magnuson-Stevens Act by regulations at 50 CFR part 622, subparts I, J, L, M, Q, and R, as they pertain to species managed by the South Atlantic Fishery Management Council (Council) under the Fishery Management Plans for Snapper-Grouper, Coastal Migratory Pelagics, Dolphin and Wahoo, Golden Crab, Spiny Lobster, and Shrimp. The EFP would also exempt the described activities from certain Atlantic cobia regulations under the Atlantic Coastal Fisheries Cooperative Management Act at 50 CFR part 697. The South Carolina Aquarium is a not-for-profit public institution dedicated to the understanding and conservation of South Carolina's natural habitats and resources. The overall intent of the project is to incorporate native species into educational exhibits at the South Carolina Aquarium. The aquarium uses these displays of native South Carolina species to teach the public about stewardship and habitat preservation.

To accomplish their request for species collection, the applicant seeks exemption from regulations at 50 CFR 622.9(c) (Fish traps); 50 CFR 622.177(a) (Gear Identification); 50 CFR 622.181(b)(1), (b)(3), and (c) (Prohibited and limited-harvest species); 50 CFR 622.183(b)(1) through (5) and (b)(7) and (8) (Area and seasonal closures); 50 CFR 622.184(a) (Seasonal harvest limitations); 50 CFR 622.185 (Size limits); 50 CFR 622.187(b), except for Nassau grouper at (b)(2)(v) (Bag and possession limits); 50 CFR 622.188(a)(2) (Required gear, authorized gear, and unauthorized gear); 50 CFR 622.200(a)(2)(i) (Permits); 50 CFR 622.240(a) (Permits); 50 CFR 622.245(c) (Prohibited species); 50 CFR 622.275 (Size limits); 622.277(a)(1)(i) and (a)(2)(i) (Bag and possession limits); 622.380(b) and (c) (Size limits); 50 CFR 622.382(a)(1)(i) and (iii) (Bag and possession limits); 50 CFR 622.402(b) (Permits); 50 CFR 622.404(d) (Prohibited gears and methods); 50 CFR 622.407(a) (Minimum size limits and other harvest limitations); 50 CFR 622.408(a) (Bag/possession limits); 50 CFR 697.28(c) (Size limits); and 50 CFR 697.28(e) (Bag and possession limits).

The applicant requires authorization to collect (live) 1,436 fish and 455 invertebrates (crabs, lobsters, and shrimp) per year in the Federal waters off South Carolina, and sporadically in the Federal waters off North Carolina. The federally-managed species to be collected by the applicant per year, over a 5-year period, listed by common name with the collection total, are: Groupers (50 total) (*Epinephelus spp.* including rock hind, graysby, speckled hind (no more than 2), yellowedge, coney, red hind, goliath (no more than 2), red, misty, warsaw (no more than 2), and snowy); groupers (50 total) (*Mycteroperca spp.* including gag, black, yellowmouth, scamp, and yellowfin); grunts (250 total) (*Haemulon spp.* including margate, tomtate, cottonwick, sailors choice, and white); jacks (75 total) (*Caranx spp.* including bar jack); jacks (125 total) (*Seriola spp.* including greater amberjack, lesser amberjack, almaco jack, and banded rudderfish); Atlantic spadefish (50); hogfish (8); wreckfish (2); porgies (65 total) (*Calamus spp.* including jolthead, saucereye, whitebone, and knobbed); red porgy (25); longspine porgy (50); scup (50); sea basses (100 total) (*Centroprstis spp.* including bank, rock, and black); snappers (175 total) (including blackfin, queen (no more than 2), mutton, red (no more than 25), cubera, gray, lane, yellowtail, vermilion (no more than 75)); blueline tilefish (5);

golden tilefish (5); sand tilefish (10); triggerfish (25 total) (*Balistes spp.* including gray); ocean triggerfish (25); bullet mackerel (100); frigate mackerel (100); king mackerel (15); Spanish mackerel (15); wahoo (5); dolphin (50); and Atlantic cobia (6). Invertebrates (non-penaeid including golden crab (5), spiny lobster (25), and rock shrimp (25); penaeid shrimp including white, pink, and brown (400).

The project would use vertical hook-and-line gear with artificial and natural baits, black sea bass pots, spiny lobster traps, golden crab traps, octopus traps, hand nets, dip nets, minnow traps and bait traps, and minnow traps. No black sea bass pots, spiny lobster traps, and golden crab traps would be deployed between November 1 and April 30 of each year to avoid interactions with North Atlantic right whales during their calving season. Bait traps and minnow traps would be deployed year round by hand by divers using SCUBA gear. Octopus traps would be deployed year round without lines with buoys going to the surface. Most of the sample collections would be done in less than 300 ft (91 m) of water. No more than five each, black sea bass pots, lobster pots, golden crab traps, minnow traps, and bait traps would be deployed with a soak time of no more than 5 hours at a time, and would not be tied together on a groundline. Up to 10 octopus traps would be deployed in depths less than 100 ft (30.5 m) with a soak time of about 7 days (not to exceed 30 days). These traps are open at one end to allow animals to escape, and are designed for octopuses. All trap and pot gear would be deployed either by hand by divers using SCUBA or through using individual nylon lines with buoys. All gear types described in this paragraph would be utilized for the collection of requested species. This EFP would authorize sampling operations to be conducted on three vessels designated by and operated by personnel from the South Carolina Aquarium.

All attempts would be made (venting, descending device, controlled ascent and descent, etc.) to release all non-targeted bycatch species alive.

NMFS finds this application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on this permit, if the permit is granted, include but are not limited to, a prohibition on conducting sampling activities within marine protected areas, marine sanctuaries, or special management zones, without additional authorization, and requiring compliance with best practices in the event of interactions with any protected species. NMFS would require any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. Currently, NMFS prohibits the possession of Nassau grouper, goliath grouper, speckled hind, warsaw grouper, and red snapper, but intends to authorize their collection as requested in the application, with the exception of Nassau grouper. Nassau grouper would not be authorized for collection.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

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

Dated: February 25, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–04401 Filed 3–1–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Human Resources Activity, Department of Defense (DoD).

ACTION: Notice of Revised Per Diem Rates in Non-foreign Areas outside the Continental U.S.

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 320. Bulletin Number 320 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States. The Fiscal Year (FY) 2022 lodging rate review for Guam, the Northern Mariana Islands and the U.S. Virgin Islands resulted in a rate change for the Tinian, Northern Mariana Islands. All other rates remain the same.

DATES: The updated rates take effect April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Laws, 571–372–1282, *david.s.laws2.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2022 lodging rate review for Guam, the Northern Mariana Islands and the U.S. Virgin Islands resulted in a rate change for Tinian, Northern Mariana Islands. All other rates remain the same. Bulletin Number 320 is published in the **Federal Register** to ensure that Government travelers outside the Department of Defense are notified of revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office's Per Diem Rate Review Frequently Asked Questions (FAQ) page at *https://www.defensetravel.dod.mil/site/faqraterev.cfm.*

Dated: February 24, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	171	113	284	10/01/2021
ALASKA	ADAK	01/01	12/31	171	113	284	10/01/2021
ALASKA	ANCHORAGE	01/01	12/31	229	125	354	10/01/2021
ALASKA	BARROW	06/01	08/31	326	129	455	10/01/2021
ALASKA	BARROW	09/01	05/31	252	129	381	10/01/2021
ALASKA	BARTER ISLAND LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	BETHEL	01/01	12/31	219	101	320	10/01/2021
ALASKA	BETTLES	01/01	12/31	171	113	*284	10/01/2021
ALASKA	CAPE LISBURNE LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	CAPE NEWENHAM LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	CAPE ROMANZOF LRRS	01/01	12/31	171	113	284	10/01/2021

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	CLEAR AB	01/01	12/31	171	113	284	10/01/2021
ALASKA	COLD BAY	01/01	12/31	171	113	284	10/01/2021
ALASKA	COLD BAY LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	COLDFOOT	01/01	12/31	219	93	312	10/01/2021
ALASKA	COPPER CENTER	01/01	12/31	171	115	286	10/01/2021
ALASKA	CORDOVA	03/01	10/31	174	106	280	10/01/2021
ALASKA	CORDOVA	11/01	02/28	150	106	256	10/01/2021
ALASKA	CRAIG	05/01	09/30	139	94	233	10/01/2021
ALASKA	CRAIG	10/01	04/30	109	94	203	10/01/2021
ALASKA	DEADHORSE	01/01	12/31	171	113	*284	10/01/2021
ALASKA	DELTA JUNCTION	01/01	12/31	171	101	272	10/01/2021
ALASKA	DENALI NATIONAL PARK	05/01	10/14	164	98	262	10/01/2021
ALASKA	DENALI NATIONAL PARK	10/15	04/30	99	98	197	10/01/2021
ALASKA	DILLINGHAM	05/01	09/30	320	113	433	10/01/2021
ALASKA	DILLINGHAM	10/01	04/30	298	113	411	10/01/2021
ALASKA	DUTCH HARBOR-UNALASKA	01/01	12/31	171	129	300	10/01/2021
ALASKA	EARECKSON AIR STATION	01/01	12/31	146	74	220	10/01/2021
ALASKA	EIELSON AFB	05/16	09/30	154	100	254	10/01/2021
ALASKA	EIELSON AFB	10/01	05/15	79	100	179	10/01/2021
ALASKA	ELFIN COVE	01/01	12/31	171	113	284	10/01/2021
ALASKA	ELMENDORF AFB	01/01	12/31	229	125	354	10/01/2021
ALASKA	FAIRBANKS	05/16	09/30	154	100	254	10/01/2021
ALASKA	FAIRBANKS	10/01	05/15	79	100	179	10/01/2021
ALASKA	FORT YUKON LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	FT. GREELY	01/01	12/31	171	101	272	10/01/2021
ALASKA	FT. RICHARDSON	01/01	12/31	229	125	354	10/01/2021
ALASKA	FT. WAINWRIGHT	05/16	09/30	154	100	254	10/01/2021
ALASKA	FT. WAINWRIGHT	10/01	05/15	79	100	179	10/01/2021
ALASKA	GAMBELL	01/01	12/31	171	113	284	10/01/2021
ALASKA	GLENNALLEN	01/01	12/31	171	113	284	10/01/2021
ALASKA	HAINES	01/01	12/31	159	113	272	10/01/2021
ALASKA	HEALY	05/01	10/14	164	98	262	10/01/2021
ALASKA	HEALY	10/15	04/30	99	98	197	10/01/2021
ALASKA	HOMER	05/01	09/30	189	124	313	10/01/2021
ALASKA	HOMER	10/01	04/30	129	124	253	10/01/2021
ALASKA	JB ELMENDORF-RICHARDSON	01/01	12/31	229	125	354	10/01/2021
ALASKA	JUNEAU	02/01	09/30	249	118	367	10/01/2021
ALASKA	JUNEAU	10/01	01/31	189	118	307	10/01/2021
ALASKA	KAKTOVIK	01/01	12/31	171	113	*284	10/01/2021
ALASKA	KAVIK CAMP	01/01	12/31	171	113	*284	10/01/2021
ALASKA	KENAI-SOLDOTNA	05/01	09/30	151	113	264	10/01/2021
ALASKA	KENAI-SOLDOTNA	10/01	04/30	104	113	217	10/01/2021
ALASKA	KENNICOTT	01/01	12/31	171	85	256	10/01/2021
ALASKA	KETCHIKAN	05/01	10/31	250	118	368	10/01/2021
ALASKA	KETCHIKAN	11/01	04/30	140	118	258	10/01/2021
ALASKA	KING SALMON	01/01	12/31	171	89	264	10/01/2021
ALASKA	KING SALMON LRRS	01/01	12/31	171	113	288	10/01/2021
ALASKA	KLAWOCK	05/01	09/30	139	94	233	10/01/2021
ALASKA	KLAWOCK	10/01	04/30	109	94	203	10/01/2021
ALASKA	KODIAK	05/01	09/30	207	109	316	10/01/2021
ALASKA	KODIAK	10/01	04/30	123	109	232	10/01/2021
ALASKA	KOTZEBUE	01/01	12/31	171	121	296	10/01/2021
ALASKA	KULIS AGS	01/01	12/31	229	125	354	10/01/2021
ALASKA	MCCARTHY	01/01	12/31	171	85	256	10/01/2021
ALASKA	MCGRATH	01/01	12/31	171	113	*284	10/01/2021
ALASKA	MURPHY DOME	05/16	09/30	154	100	254	10/01/2021
ALASKA	MURPHY DOME	10/01	05/15	79	100	179	10/01/2021
ALASKA	NOME	01/01	12/31	200	118	318	10/01/2021
ALASKA	NOSC ANCHORAGE	01/01	12/31	229	125	354	10/01/2021
ALASKA	NUIQSUT	01/01	12/31	171	113	*284	10/01/2021
ALASKA	OLIKTOK LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	PALMER	01/01	12/31	171	117	288	10/01/2021
ALASKA	PETERSBURG	01/01	12/31	130	108	238	10/01/2021
ALASKA	POINT BARROW LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	POINT HOPE	01/01	12/31	171	113	*284	10/01/2021
ALASKA	POINT LONELY LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	PORT ALEXANDER	01/01	12/31	171	113	*284	10/01/2021
ALASKA	PORT ALSWORTH	01/01	12/31	171	113	284	10/01/2021
ALASKA	PRUDHOE BAY	01/01	12/31	171	113	*284	10/01/2021
ALASKA	SELDOVIA	05/01	09/30	189	124	313	10/01/2021
ALASKA	SELDOVIA	10/01	04/30	129	124	253	10/01/2021
ALASKA	SEWARD	04/01	09/30	299	146	445	10/01/2021
ALASKA	SEWARD	10/01	03/31	104	146	250	10/01/2021
ALASKA	SITKA-MT. EDGECUMBE	04/01	09/30	220	116	336	10/01/2021
ALASKA	SITKA-MT. EDGECUMBE	10/01	03/31	189	116	305	10/01/2021
ALASKA	SKAGWAY	05/01	10/31	250	118	368	10/01/2021
ALASKA	SKAGWAY	11/01	04/30	140	118	258	10/01/2021
ALASKA	SLANA	01/01	12/31	171	113	284	10/01/2021
ALASKA	SPARREVOHN LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	SPRUCE CAPE	05/01	09/30	207	109	316	10/01/2021
ALASKA	SPRUCE CAPE	10/01	04/30	123	109	232	10/01/2021
ALASKA	ST. GEORGE	01/01	12/31	171	113	284	10/01/2021

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	TALKEETNA	01/01	12/31	171	120	291	10/01/2021
ALASKA	TANANA	01/01	12/31	200	118	318	10/01/2021
ALASKA	TATALINA LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	TIN CITY LRRS	01/01	12/31	171	113	284	10/01/2021
ALASKA	TOK	01/01	12/31	105	113	218	10/01/2021
ALASKA	VALDEZ	05/01	09/15	212	110	322	10/01/2021
ALASKA	VALDEZ	09/16	04/30	129	110	239	10/01/2021
ALASKA	WAINWRIGHT	01/01	12/31	275	77	352	10/01/2021
ALASKA	WASILLA	06/01	10/31	171	94	265	10/01/2021
ALASKA	WASILLA	11/01	05/31	90	94	184	10/01/2021
ALASKA	WRANGELL	05/01	10/31	250	118	368	10/01/2021
ALASKA	WRANGELL	11/01	04/30	140	118	258	10/01/2021
ALASKA	YAKUTAT	06/01	10/15	350	111	461	10/01/2021
ALASKA	YAKUTAT	10/16	05/31	150	111	261	10/01/2021
AMERICAN SAMOA	AMERICAN SAMOA	01/01	12/31	139	86	225	07/01/2019
AMERICAN SAMOA	PAGO PAGO	01/01	12/31	139	86	225	07/01/2019
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01	12/31	159	96	255	04/01/2022
GUAM	JOINT REGION MARIANAS (ANDERSEN)	01/01	12/31	159	96	255	04/01/2022
GUAM	JOINT REGION MARIANAS (NAVAL BASE)	01/01	12/31	159	96	255	04/01/2022
GUAM	TAMUNING	01/01	12/31	159	96	255	04/01/2022
HAWAII	[OTHER]	01/01	12/31	218	149	367	01/01/2021
HAWAII	CAMP H M SMITH	01/06	12/16	177	149	326	12/17/2021
HAWAII	CAMP H M SMITH	12/17	01/05	312	149	461	12/17/2021
HAWAII	CNI NAVMAG PEARL HARBOR- HICKAM	01/06	12/16	177	149	326	12/17/2021
HAWAII	CNI NAVMAG PEARL HARBOR- HICKAM	12/17	01/05	312	149	461	12/17/2021
HAWAII	FT. DERUSSEY	01/06	12/16	177	149	326	12/17/2021
HAWAII	FT. DERUSSEY	12/17	01/05	312	149	461	12/17/2021
HAWAII	FT. SHAFTER	01/06	12/16	177	149	326	12/17/2021
HAWAII	FT. SHAFTER	12/17	01/05	312	149	461	12/17/2021
HAWAII	HICKAM AFB	01/06	12/16	177	149	326	12/17/2021
HAWAII	HICKAM AFB	12/17	01/05	312	149	461	12/17/2021
HAWAII	HONOLULU	01/06	12/16	177	149	326	12/17/2021
HAWAII	HONOLULU	12/17	01/05	312	149	461	12/17/2021
HAWAII	ISLE OF HAWAII: HILO	01/01	12/31	199	120	319	01/01/2021
HAWAII	ISLE OF HAWAII: LOCATIONS OTHER THAN HILO	01/01	12/31	218	156	374	01/01/2021
HAWAII	ISLE OF KAUAI	01/01	12/31	325	141	466	01/01/2021
HAWAII	ISLE OF LANAI	01/01	12/31	218	134	352	01/01/2021
HAWAII	ISLE OF MAUI	01/01	12/31	304	150	454	01/01/2021
HAWAII	ISLE OF MOLOKAI	01/01	12/31	218	106	324	01/01/2021
HAWAII	ISLE OF OAHU	01/06	12/16	177	149	326	12/17/2021
HAWAII	ISLE OF OAHU	12/17	01/05	312	149	461	12/17/2021
HAWAII	JB PEARL HARBOR–HICKAM	01/06	12/16	177	149	326	12/17/2021
HAWAII	JB PEARL HARBOR–HICKAM	12/17	01/05	312	149	461	12/17/2021
HAWAII	KAPOLEI	01/06	12/16	177	149	326	12/17/2021
HAWAII	KAPOLEI	12/17	01/05	312	149	461	12/17/2021
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC	01/01	12/31	325	141	466	01/01/2021
HAWAII	KILAUEA MILITARY CAMP	01/01	12/31	199	120	319	01/01/2021
HAWAII	LIHUE	01/01	12/31	325	141	466	01/01/2021
HAWAII	MCB HAWAII	01/06	12/16	177	149	326	12/17/2021
HAWAII	MCB HAWAII	12/17	01/05	312	149	461	12/17/2021
HAWAII	NCTAMS PAC WAHIAWA	01/06	12/16	177	149	326	12/17/2021
HAWAII	NCTAMS PAC WAHIAWA	12/17	01/05	312	149	461	12/17/2021
HAWAII	NOSC PEARL HARBOR	01/06	12/16	177	149	326	12/17/2021
HAWAII	NOSC PEARL HARBOR	12/17	01/05	312	149	461	12/17/2021
HAWAII	PEARL HARBOR	01/06	12/16	177	149	326	12/17/2021
HAWAII	PEARL HARBOR	12/17	01/05	312	149	461	12/17/2021
HAWAII	PMRF BARKING SANDS	01/01	12/31	325	141	466	01/01/2021
HAWAII	SCHOFIELD BARRACKS	01/06	12/16	177	149	326	12/17/2021
HAWAII	SCHOFIELD BARRACKS	12/17	01/05	312	149	461	12/17/2021
HAWAII	TRIPLER ARMY MEDICAL CENTER	01/06	12/16	177	149	326	12/17/2021
HAWAII	TRIPLER ARMY MEDICAL CENTER	12/17	01/05	312	149	461	12/17/2021
HAWAII	WHEELER ARMY AIRFIELD	01/01	12/31	177	149	326	01/01/2021
HAWAII	WHEELER ARMY AIRFIELD	12/17	01/05	312	149	461	12/17/2021
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	01/01/2021
NORTHERN MARIANA ISLANDS	ROTA	01/01	12/31	130	114	244	04/01/2022
NORTHERN MARIANA ISLANDS	SAIPAN	01/01	12/31	161	113	274	04/01/2022
NORTHERN MARIANA ISLANDS	TINIAN	01/01	12/31	125	93	218	04/01/2022
PUERTO RICO	[OTHER]	01/01	12/31	159	100	259	05/01/2021
PUERTO RICO	AGUADILLA	01/01	12/31	149	90	239	05/01/2021
PUERTO RICO	BAYAMON	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	BAYAMON	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	CAROLINA	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	CAROLINA	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	CEIBA	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	CULEBRA	01/01	12/31	159	105	264	05/01/2021
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT]	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	HUMACAO	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	LUQUILLO	01/01	12/31	159	110	269	05/01/2021

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
PUERTO RICO	MAYAGUEZ	01/01	12/31	109	94	203	05/01/2021
PUERTO RICO	PONCE	01/01	12/31	149	130	279	05/01/2021
PUERTO RICO	RIO GRANDE	01/01	12/31	169	85	254	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILITARY]	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILITARY]	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	VIEQUES	01/01	12/31	159	94	253	05/01/2021
VIRGIN ISLANDS (U.S.)	ST. CROIX	12/15	04/14	299	120	419	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. CROIX	04/15	12/14	247	120	367	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/04	04/30	230	123	353	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. JOHN	05/01	12/03	170	123	293	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	249	118	367	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	339	118	457	04/01/2022
WAKE ISLAND	WAKE ISLAND	01/01	12/31	129	70	199	01/01/2021

*Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2022–04329 Filed 3–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0023]

Proposed Collection; Comment Request; Correction

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice; correction.

SUMMARY: The Department of Defense is correcting a notice that appeared in the **Federal Register** on February 23, 2022. Subsequent to publication of the notice, the DoD discovered that the Docket ID was not listed correctly. DoD is issuing this correction to provide the correct Docket ID.

DATES: This correction is effective on March 2, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–03782 appearing at 87 FR 10179–10180 in the **Federal Register** of Wednesday, February 23, 2022, the Docket ID is changed to read [Docket ID: DoD–2022–OS–0023] as set forth above.

Dated: February 23, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–04316 Filed 3–1–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Alaska Native Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On January 12, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2022 Alaska Native Education (ANE) program competition, Assistance Listing Number 84.356A. The ANE NIA established a deadline date of March 14, 2022, for transmittal of applications. This notice extends the FY 2022 application deadline date to April 26, 2022. This notice relates to the approved information collections under OMB control numbers 1894–0006 and 1840–0842.

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202. Telephone: (202) 260–1979. Email: *OESE.ASKANEP@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: On January 12, 2022, we published the NIA for the FY 2022 ANE competition in the **Federal Register** (87 FR 1732). To allow applicants more time to prepare and submit their applications, we are extending the deadline for transmittal of applications. The application package will be adjusted to reflect the changes.

Applicants that have already submitted applications under the FY 2022 ANE competition may resubmit applications, but are not required to do so. The Department will consider the application that is most recently submitted before the deadline of April 26, 2022.

All other requirements and conditions stated in the NIA remain the same.

Program Authority: 20 U.S.C. 7541–7546.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–04517 Filed 3–1–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0027]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2022 Materials Update #3

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 1, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

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: National Assessment of Educational Progress (NAEP) 2022 Materials Update #3.

OMB Control Number: 1850–0928.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 710,917.

Total Estimated Number of Annual Burden Hours: 431,269.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: The NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s.

The request to conduct NAEP 2021, including operational assessments and pilot tests: Operational national/state/TUDA Digitally Based Assessments (DBA) in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8 was approved in April 2020, with further updates to the materials approved in July and November 2020. Throughout 2020 NCES worked with its contractors and with OMB to find the best way to plan for a data collection in schools in 2021, and as the coronavirus pandemic progressed over the course of the year, plans for NAEP 2020 data collection changed multiple times. In November 2020, the NCES Commissioner announced the delay of NAEP 2021 by one year to early 2022.

Since then, NAEP has continued to work to salvage any pieces of their data collection plans for 2021 and begin planning for NAEP 2022. NCES has used the drawn and notified sample from 2021 for two data collections that don't include the student assessment that is central to the NAEP program, instead using that sample to collect information about basic school operations during the coronavirus pandemic (NAEP 2021 School Survey; OMB# 1850–0957) and the experiences of teachers and school staff over the 2019–2020 and 2020–2021 school years (NAEP 2021 School and Teacher Questionnaire Special Study; OMB# 1850–0956).

The request to conduct NAEP operational assessments in 2022, which will follow the traditional NAEP design which assesses each student in 60-minutes for one cognitive subject, was approved in May 2021, and the first and second updates to the NAEP 2022 materials were approved in August and October 2021. The 2022 data collection will consist of operational national/state/TUDA DBA in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8. In November 2021, the National Assessment Governing Board (NAGB) decided that in addition to the previously approved administration of LTT9 in Spring 2022, NAEP will also re-administer LTT Age 13 in Fall 2022, which will assess 13-year-old students and also include additional survey questionnaires to students and school administrators related to the COVID–19 outbreak. This submission contains all materials for the administration of the LTT Age 13 in Fall 2022.

Dated: February 25, 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. 2022–04360 Filed 3–1–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–013]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market and Planning Efficiency Through Improved Software

Take notice that Commission staff will convene a technical conference on June 21, 22, and 23, 2022 to discuss opportunities for increasing real-time and day-ahead market efficiency of the bulk power system through improved software. A detailed agenda with the list of and times for the selected speakers will be published on the Commission's website [1] and in eLibrary after May 20, 2022.

This conference will bring together and encourage discussion between experts from diverse backgrounds, including electric power system operators, software developers, and professionals from government, research centers, and academia. The conference will bring these experts together for the purposes of stimulating discussion, sharing information, and identifying fruitful avenues for research on improving software for increased efficiency and reliability of the bulk power system.

This conference will build on discussions at prior conferences in this proceeding by focusing on topics identified as important to market efficiency in those conferences. Broadly, such topics fall into the following categories:

(1) Software for better modeling and computation of storage resources and distributed energy resources (DERs), especially software that addresses challenges such resources pose to current market-clearing and dispatch algorithms.

(2) Software advances to help with the transition to increased use of probabilistic models in system planning, whether scenario-based or stochastic, to better account low-probability, high-impact events, such as extreme weather events, which are increasingly common.

(3) Improvements to the ability to identify and use flexibility in the existing systems in ways that improve bulk power system reliability and economic efficiency, including transmission constraint relaxation practices, ramp management, and improving resources' responsiveness to dispatch instructions.

(4) Representations of uncertainty that increase market efficiency and lead to better understanding of events that could impact reliability of the bulk power system, including: 15-Minute unit-commitment and day-ahead market intervals; stochastic modeling; software for forecasting and enhancing visibility into changing system conditions; improved modeling approaches to energy and reserve dispatch; and software for managing uncertainties in variable energy resource output.

(5) Software related to grid-enhancing technologies, such as those described in Docket Nos. AD19–19 [2] and AD19–15,[3] including optimal transmission switching, dynamic transmission line ratings, power flow controls, and any software related to implementing the Commission's recent rulemaking regarding line ratings in Order No. 881.[4]

(6) Software for better modeling and computation of resources with distinct operating characteristics such as storage resources, multi-stage/multi-configuration resources, hybrid resources, aggregations of DERs, and others. Presentations on this topic should focus on alternative formulations and solution methods for market models.

(7) Improvements to the representation of physical constraints that are either not currently modeled or currently modeled using mathematical approximations, including voltage and reactive power constraints, stability constraints, fuel delivery constraints, and constraints related to contingencies.

(8) Software that enables the calculation of prices that better reflect costs of operation and that provide better incentives for efficient market entry and market exit.

(9) Other improvements in algorithms, model formulations, or hardware that may allow for increases in market efficiency and enhanced bulk power system reliability.

Within these or related topics, we encourage presentations that discuss modeling best practices, existing modeling practices that need improvement, any modeling advances newly achieved, or perspectives on increasing market efficiency through improved power systems modeling.

The conference will take place virtually via WebEx, with remote participation from both presenters and attendees. Further details on remote attendance and participation will be released prior to the conference.

Attendees must register through the Commission's website on or before June 10, 2022.[5] WebEx connections may not be available to those who do not register.

Speaker nominations must be submitted on or before April 22, 2022 through the Commission's website [6] by providing the proposed speaker's contact information along with a title, abstract, and list of contributing authors for the proposed presentation. Proposed presentations should be related to the topics discussed above. Speakers and presentations will be selected to ensure relevant topics and to accommodate time constraints.

The Commission will accept comments following the conference, with a deadline of July 29, 2022.

There is an ''eSubscription'' link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations. This notice is issued and published in accordance with 18 CFR 2.1.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Alexander Smith (Technical Information), Office of Energy Policy

[1] *https://www.ferc.gov/industries-data/electric/power-sales-and-markets/increasing-efficiency-through-improved-software.*

[2] *Electric Transmission Incentives Policy under Section 219 of the Federal Power Act,* Docket No. AD19–19–000.

[3] *Managing Transmission Line Ratings,* Docket No. AD19–15–000.

[4] *Managing Transmission Line Ratings,* Order No. 881, 177 FERC ¶ 61,179 (2021).

[5] The attendee registration form is located at *https://www.surveymonkey.com/r/SHFLFKV.*

[6] The speaker nomination form is located at *https://www.surveymonkey.com/r/S3M89MK.*

and Innovation, (202) 502–6601, *Alexander.Smith@ferc.gov*.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04376 Filed 3–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1103–000]

BRP Capital & Trade LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BRP Capital & Trade LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 16, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04377 Filed 3–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–579–000.
Applicants: Stagecoach Pipeline & Storage Company LLC.
Description: Compliance filing: Conversion to DART System and Other Housekeeping Tariff Changes to be effective 4/1/2022.
Filed Date: 2/23/22.
Accession Number: 20220223–5041.
Comment Date: 5 p.m. ET 3/7/22.

Docket Numbers: RP22–580–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing-Mercuria Energy America, LLC to be effective 2/23/2022.
Filed Date: 2/23/22.
Accession Number: 20220223–5043.
Comment Date: 5 p.m. ET 3/7/22.

Docket Numbers: RP22–581–000.
Applicants: Arlington Storage Company, LLC.
Description: Compliance filing: Conversion to DART System and Other Housekeeping Tariff Changes to be effective 4/1/2022.
Filed Date: 2/23/22.
Accession Number: 20220223–5045.
Comment Date: 5 p.m. ET 3/7/22.

Docket Numbers: RP22–582–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Amended CNX 410344 to be effective 3/1/2022.
Filed Date: 2/23/22.
Accession Number: 20220223–5074.
Comment Date: 5 p.m. ET 3/7/22.

Docket Numbers: RP22–583–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: RAM 2022 to be effective 4/1/2022.
Filed Date: 2/23/22.
Accession Number: 20220223–5081.
Comment Date: 5 p.m. ET 3/7/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04380 Filed 3–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1101–000]

Cascade Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cascade Energy Storage, LLC's application for market-based rate authority, with an

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 16, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04379 Filed 3–1–22; 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: EC22–44–000.
Applicants: Panorama Wind, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Panorama Wind, LLC.
Filed Date: 2/23/22.
Accession Number: 20220223–5164.
Comment Date: 5 p.m. ET 3/16/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–58–000; EG04–61–000.
Applicants: Victoria WLE, LP, Victoria WLE, LP.
Description: Notice of Self-Recertification of Exempt Wholesale Generator Status of Victoria WLE, LP.
Filed Date: 2/24/22.
Accession Number: 20220224–5092.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: EG22–59–000.
Applicants: Brookfield White Pine Hydro LLC.
Description: Notice of Self-Recertification of Exempt Wholesale Generator Status of Brookfield White Pine Hydro LLC.
Filed Date: 2/24/22.
Accession Number: 20220224–5093.
Comment Date: 5 p.m. ET 3/17/22.

Take notice that the Comission received the following electric rate filings:

Docket Numbers: ER10–1631–018; ER10–1854–018; ER10–1859–011; ER10–1892–021; ER10–2678–019; ER10–2729–013; ER10–2739–034; ER10–2744–019; ER11–3320–018; ER11–3321–012; ER12–995–009; ER13–2316–016; ER14–19–017; ER14–1219–013; ER14–2548–010; ER16–1652–021; ER16–1732–012; ER16–1924–007; ER16–1925–007; ER16–1926–007; ER16–2405–012; ER16–2406–013; ER17–989–011; ER17–990–011; ER17–992–011; ER17–993–011; ER17–1494–005; ER17–1946–011; ER17–1947–006; ER17–1948–006; ER18–95–008; ER19–170–005; ER20–660–008; ER20–1440–004; ER21–1133–001; ER21–1505–003.
Applicants: Diablo Energy Storage, LLC, Hummel Station, LLC, Yards Creek Energy, LLC, Bolt Energy Marketing, LLC, Gateway Energy Storage, LLC, Buchanan Energy Services Company, LLC, Helix Ravenswood, LLC, Helix Maine Wind Develop.m.ent, LLC, Helix Ironwood, LLC, Vista Energy Storage, LLC, Bath County Energy, LLC, Springdale Energy, LLC, Gans Energy, LLC, Chambersburg Energy, LLC, Rockford Power, LLC, Rockford Power II, LLC, San Isabel Solar LLC, Pavant Solar II LLC, Bison Solar LLC, Aurora Generation, LLC, LifeEnergy LLC, Ocean State Power, Armstrong Power, LLC, West Deptford Energy, LLC, Seneca Generation, LLC, Cherokee County Cogeneration Partners, LLC, Wallingford Energy LLC, LSP University Park, LLC, Riverside Generating Company, L.L.C., LS Power Marketing, LLC, Buchanan Generation, LLC, Troy Energy, LLC, Columbia Energy LLC, Santa Rosa Energy Center, LLC, Doswell Limited Partnership, University Park Energy, LLC.
Description: Notice of Change in Status of LS MBR Sellers, et al.
Filed Date: 2/23/22.
Accession Number: 20220223–5167.
Comment Date: 5 p.m. ET 3/16/22.

Docket Numbers: ER21–927–000.
Applicants: Cleveland-Cliffs Steel LLC.
Description: Refund Report: Refund report to 10004 to be effective N/A.
Filed Date: 2/24/22.
Accession Number: 20220224–5098.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER21–1650–002.
Applicants: ISO New England Inc., NSTAR Electric Company.
Description: Compliance filing: NSTAR Electric Company submits tariff filing per 35: NSTAR Electric Company; Docket No. ER21–165–to be effective 1/27/2020.
Filed Date: 2/24/22.
Accession Number: 20220224–5068.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–431–000.
Applicants: Pacific Gas and Electric Company.
Description: Refund Report: CCSF Sunol Refund Compliance Filing (SA 275) to be effective N/A.
Filed Date: 2/24/22.
Accession Number: 20220224–5000.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1104–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6368; Queue No. AF2–249 to be effective 1/26/2022.
Filed Date: 2/24/22.

Accession Number: 20220224–5022.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1105–000.
Applicants: Arizona Public Service Company, Public Service Company of Colorado, Tucson Electric Power Company, UNS Electric, Inc., Black Hills Power, Inc., Black Hills Colorado Electric, LLC, Cheyenne Light Fuel and Power Company, El Paso Electric Company, Public Service Company of New Mexico.
Description: Petition for Approval of Settlement Agreement of WestConnect Public Utilities.
Filed Date: 2/16/22.
Accession Number: 20220216–5231.
Comment Date: 5 p.m. ET 3/9/22.

Docket Numbers: ER22–1106–000.
Applicants: Crossing Trails Wind Power Project LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 2/25/2022.
Filed Date: 2/24/22.
Accession Number: 20220224–5032.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1107–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 6367; Queue No. AF2–250 to be effective 1/26/2022.
Filed Date: 2/24/22.
Accession Number: 20220224–5069.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1108–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3914 Mother Road Solar Energy Surplus Interconnection GIA to be effective 4/26/2022.
Filed Date: 2/24/22.
Accession Number: 20220224–5091.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1109–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Joint 205 SGIA among NMPC, NYISO, Bald Mountain for NY 13 Solar SA2681 to be effective 2/10/2022.
Filed Date: 2/24/22.
Accession Number: 20220224–5107.
Comment Date: 5 p.m. ET 3/17/22.

Docket Numbers: ER22–1110–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement 6366; Queue No. AE2–042 to be effective 1/24/2022.
Filed Date: 2/24/22.
Accession Number: 20220224–5133.
Comment Date: 5 p.m. ET 3/17/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR22–1–000.
Applicants: North American Electric Reliability Corporation.
Description: Joint Petition of North American Electric Reliability Corporation and ReliabilityFirst Corporation for Approval of Amendments to ReliabilityFirst Corporation Bylaws.
Filed Date: 2/18/22.
Accession Number: 20220218–5263.
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: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04381 Filed 3–1–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1102–000]

Sierra Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sierra Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 16, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: February 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–04378 Filed 3–1–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–01–2010; FRL–9549–01–OMS]

Proposed Information Collection Request; Comment Request; Ethnicity, Race, Gender and Disability Self-Identification Form for Nominees Considered for Appointment on Federal Advisory Committees at the U.S. Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Ethnicity, Race, Gender and Disability Self-Identification Form for nominees considered for appointment on federal advisory committees at the Environmental Protection Agency, (EPA ICR No. 2090–NEW, OMB Control No. 2030–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. 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: Comments must be submitted on or before May 2, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–01–2010; FRL–9549–01–OMS online using *www.regulations.gov* (our preferred method), by email to *Docket_OMS@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 public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Gina Moore, Office of Resources and Business Operations, 3101A, Federal Advisory Committee Management Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0462; email address: *moore.gina@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.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Agency officials developed the ''Ethnicity, Race, Gender and Disability Self-Identification Form'' to comply with Executive Order (14035): Diversity, Equity, Inclusion and Accessibility in the Federal Workforce, Section 5(e) that directs the U.S. Environmental Protection Agency to collect and analyze voluntarily self-reported demographic data regarding the membership of federal advisory committees to pursue opportunities to increase diversity, equity, inclusion, and accessibility.

This information collection request will assist EPA when selecting members to EPA's scientific and technical federal advisory committees to ensure that members and future nominees reflect the diversity of the American people in terms of gender, race, ethnicity, geography, and other characteristics.

Form Number: EPA 5800–068.

Respondents/affected entities: Entities potentially affected by this action are approximately 200 candidates for membership on EPA's federal advisory committees. In an effort to ensure future nominees reflect the diversity of America, all nominees are encouraged to complete and submit EPA Form 5800–068 when applying for membership in accordance with Executive Order 14035 of June 25, 2021: *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.*

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 200 (total).

Frequency of response: Annually.

Total estimated burden: 16.6 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $0.

Changes in Estimates: There is no change in burden because this is a new information collection request.

Lynnann Hitchens,

Acting Principal Deputy Assistant Administrator, Office of Mission Support.

[FR Doc. 2022–04403 Filed 3–1–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

Time and Date: 9:00 a.m., Thursday, March 10, 2022.

Place: You may physically, at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually observe the open portions of this meeting. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' and then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

Status: Parts of this meeting will be open to the public. The rest of this meeting will be closed to the public.

Matters to be Considered: The Farm Credit Administration Board will consider the following matters:

Portions Open to the Public

- Approval of February 10, 2022, Minutes
- Spring 2022 Unified Agenda
- Funding Conditions for the Farm Credit System

Portions Closed to the Public

- Office of Secondary Market Oversight Periodic Report [1]

Contact Person for More Information: If you need more information or assistance for accessibility reasons, or if you have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–04305 Filed 2–28–22; 11:15 am]

BILLING CODE 6705–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of Article VI of the Bylaws of the FCSIC.

DATES: 10:00 a.m., Wednesday, March 9, 2022.

ADDRESSES: Because of the COVID–19 pandemic and the current operating status of the FCSIC, the public may only virtually observe the open portions of this meeting. If you would like to virtually observe, at least 24 hours in advance, visit *FCSIC.gov*, select ''News & Events,'' and then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or if you have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION:

Status: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Matters To Be Considered:

Portions Open to the Public

- Approval of January 27, 2022, Minutes
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Annual Report on Investment Portfolio
- Presentation of 2021 Audit Results

[1] Session Closed-Exempt to 5 U.S.C. Section 552b(c)(8) and (9).

Portions Closed to the Public

- Quarterly Report on Insurance Risk
- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–04310 Filed 3–1–22; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

[FR NN; OMB No. 7100–0353]

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN.

Agency form number: FR NN.

OMB control number: 7100–0353.

Frequency: As needed.

Respondents: State member banks, uninsured state-licensed branches of foreign banks, financial holding companies, bank holding companies, savings and loan holding companies, agreement corporations, and Edge Act corporations that engage in retail foreign exchange transactions (collectively, banking institutions).

Estimated number of respondents: Reporting, section 240.4: 1; recordkeeping, sections 240.7, 240.9(b)(2), and 240.13(a): 2; disclosure, sections 240.5(a), 240.6, 240.10, 240.13(c)–(d), 240.15, and 240.16(a) and (b): 2.

Estimated average hours per response: Reporting, section 240.4: 16; recordkeeping, sections 240.7, 240.9(b)(2), and 240.13(a): 183; disclosure, sections 240.5(a), 240.6, 240.10, 240.13(c)–(d), 240.15, and 240.16(a) and (b): 787.

Estimated annual burden hours: Reporting, section 240.4: 16; recordkeeping, sections 240.7, 240.9(b)(2), and 240.13(a): 366; disclosure, sections 240.5(a), 240.6, 240.10, 240.13(c)–(d), 240.15, and 240.16(a) and (b): 1,574.

General description of report: Section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 2(c)(2) of the Commodity Exchange Act (CEA) to prohibit persons supervised by certain Federal regulatory agencies, including the Board, from entering into, or offering to enter into, certain types of foreign exchange transactions, except pursuant to a rule or regulation promulgated by the relevant supervising agency. The Board's Regulation NN (12 CFR part 240) authorizes banking institutions supervised by the Board to conduct retail foreign exchange transactions and establishes certain reporting, recordkeeping, and disclosure requirements for banking institutions that choose to conduct such transactions.

Legal authorization and confidentiality: The reporting, recordkeeping, and disclosure requirements in Regulation NN are authorized pursuant to section 2(c)(2)(E)

of the CEA,[1] which prohibits a United States financial institution and its related persons under the supervision of a Federal regulatory agency, such as the Board, from offering or entering into certain types of foreign exchange transactions with retail customers except pursuant to a rule or regulation prescribed by the appropriate Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.[2] Regulation NN's reporting, recordkeeping, and disclosure requirements are mandatory for banking institutions that engage in retail foreign exchange transactions.

The reporting requirement under section 240.4 of Regulation NN requires a banking institution to provide a prior written notice to the Board that includes information concerning customer due diligence; the policies and procedures for haircuts to be applied to noncash margin; information concerning new product approvals; and information on addressing conflicts of interest. This information is likely to constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (FOIA).[3] In addition, the prior written notice must also include a resolution of the banking institution's board of directors certifying that the institution has written policies, procedures, and risk measurement and management systems and controls in place to ensure retail foreign exchange transactions are conducted in a safe and sound manner and in compliance with Regulation NN. Generally, this resolution by the board of directors would not be accorded confidential treatment. If confidential treatment is requested by a banking institution, the Board will review the request to determine if confidential treatment is appropriate.

The records and disclosures required by Regulation NN generally are not submitted to the Federal Reserve. Accordingly, confidentiality issues generally do not arise under the FOIA. In the event such records or disclosures are obtained by the Federal Reserve through the examination or enforcement process, such information may be kept confidential under exemption 8 of the FOIA,[4] which protects information contained in or related to an examination of a financial institution.

Current actions: On November 23, 2021, the Board published a notice in the **Federal Register** (86 FR 66561) requesting public comment for 60 days on the extension, without revision, of the FR NN. The comment period for this notice expired on January 24, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04347 Filed 3–1–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 7 U.S.C. 2(c)(2)(E).

[2] Additionally, the Board also has the authority to require reports from state member banks under section 11 of the Federal Reserve Act (FRA), 12 U.S.C. 248; from branches of foreign banks under sections 9 and 13 of the International Banking Act of 1978, 12 U.S.C. 3106a and 3108; from bank holding companies under section 5(b) and (c) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b) and (c); from savings and loan holding companies under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a(b) and (g); from Edge Act corporations under section 25A(17) of the FRA, 12 U.S.C. 625; and from agreement corporations under section 25 of the FRA, 12 U.S.C. 601–604a.

[3] 5 U.S.C. 552(b)(4).

[4] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

[FR 4008; OMB No. 7100–0131]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice of Proposed Stock Redemption.

DATES: Comments must be submitted on or before May 2, 2022.

ADDRESSES: You may submit comments, identified by FR 4008, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Notice of Proposed Stock Redemption.

Agency form number: FR 4008.

OMB control number: 7100–0131.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs).

Estimated number of respondents: 6.

Estimated average hours per response: 15.5.

Estimated annual burden hours: 93.

General description of report: The Bank Holding Company Act of 1956 (BHC Act) and Board's Regulation Y—Bank Holding Companies and Change in Bank Control (12 CFR 225) require a BHC to seek the prior approval of the Board before purchasing or redeeming its equity securities in certain circumstances. Due to the limited information that a BHC must provide in connection with any such request, there is no required reporting form (the FR 4008 designation is for internal purposes only), and each request for prior approval is generally filed 30 days before the proposed stock purchase or redemption as a notification with the Reserve Bank that has direct supervisory responsibility for the requesting BHC. The Federal Reserve uses the information provided in the redemption notices to supervise BHCs.

Legal authorization and confidentiality: The FR 4008 is authorized pursuant to sections 5(b) and (c) of the Bank Holding Company Act (BHC Act).[1] Section 5(b) of the BHC Act, as amended by section 616 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[2] authorizes the Board to ''issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.'' Section 5(c) of the BHC Act generally authorizes the Board to, among other things, require reports from BHCs on a range of issues. The FR 4008 is required for certain BHCs to obtain the benefit of being able to purchase or redeem their equity securities.

Individual respondents may request that data submitted be kept confidential on a case-by-case basis. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on an ad hoc basis. Requests may include information related to the BHC's business operations, such as terms and sources of the funding for the redemption and pro forma balance sheets. To the extent that this information constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may be kept confidential under exemption 4 of the Freedom of Information Act, which exempts ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''[3]

Board of Governors of the Federal Reserve System, February 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04345 Filed 3–1–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1844(b) and (c).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 5 U.S.C. 552(b)(4).

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 16, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The MES 2022 Trust and Marvin Edward Singleton, IV, individually, and as trustee, both of Waxahachie, Texas;* to join the Marvin Edward Singleton, III Family Control Group, a group acting in concert, to acquire voting shares of First Citizens Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens National Bank of Texas, both of Waxahachie, Texas.

Board of Governors of the Federal Reserve System, February 25, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04395 Filed 3–1–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[FR 4004; OMB No. 7100–0112]

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Written

Security Program for State Member Banks.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Respondents: State member banks.

Estimated number of respondents: 14.

Estimated average hours per response: 1.

Estimated annual burden hours: 14.

General description of report: This information collection arises from a recordkeeping requirement contained in section 208.61 of the Board's Regulation H, Membership of State Banking Institutions in the Federal Reserve System (12 CFR 208), which requires each state member bank to develop and maintain a written security program for the bank's main office and branches within 180 days of becoming a member of the Federal Reserve System.

Legal authorization and confidentiality: Section 3 of the Bank Protection Act of 1968 authorizes the FR 4004 recordkeeping requirement.[1] The FR 4004 is mandatory.

Entities subject to the FR 4004 recordkeeping requirement generally are not required to provide such information to the Board. If the Board obtained information retained pursuant to the FR 4004 as part of an examination or supervision of a financial institution, it may be considered confidential under exemption 8 of the Freedom of Information Act (FOIA).[2] Information provided under the FR 4004 may also be kept confidential under FOIA exemption 4 as confidential commercial or financial information that is both customarily and actually treated as private.[3]

Current actions: On November 23, 2021, the Board published a notice in the **Federal Register** (86 FR 66559) requesting public comment for 60 days on the extension, without revision, of the Written Security Program for State Member Banks. The comment period for this notice expired on January 24, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04348 Filed 3–1–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1882(a) (requiring federal banking agencies, including the Board, to issue rules establishing minimum standards for banks with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts).

[2] 5 U.S.C. 552(b)(8).

[3] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

[FR 2320; OMB No. 7100–0345]

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Quarterly Savings and Loan Holding Company Report.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Quarterly Savings and Loan Holding Company Report.

Agency form number: FR 2320.

OMB control number: 7100–0345.

Frequency: Quarterly.

Respondents: Savings and loan holding companies (SLHCs).

Estimated number of respondents: 5.

Estimated average hours per response: 2.5.

Estimated annual burden hours: 50.

General description of report: The FR 2320 collects select parent only and consolidated balance sheet and income statement financial data and organizational structure data from SLHCs exempt from filing other Federal Reserve regulatory reports. Specifically, the FR 2320 collects data on the assets, liabilities, equity, and income of the organization. In addition, the FR 2320 collects information about and changes to the organization's subsidiaries, management, capital structure, and operations.

Legal authorization and confidentiality: The FR 2320 is authorized by section 10(b)(2) of the Home Owners' Loan Act (HOLA), which states that ''each [SLHC] and each subsidiary thereof, other than a savings

association, shall file with the Board, such reports as may be required by the Board.'' [1] Section 10(b)(2) of HOLA also states that ''each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.'' [2]

The FR 2320 is mandatory. Generally, in the case of tiered SLHCs that are exempt SLHCs, only the top-tier SLHC must file the FR 2320 for the consolidated SLHC organization. However, in certain cases, a lower-tier SLHC may be required to file the FR 2320 instead of the top-tier SLHC if it is determined by the district Federal Reserve Bank that the lower-tier SLHC more closely reflects the risk profile, assets, and liabilities of the subsidiary savings association(s). In addition, lower-tier SLHCs may voluntarily file the FR 2320 or may be required to file in addition to the top-tier SLHC if it is determined that such a filing is necessary to accurately assess the impact that the activities or financial condition of the lower-tier SLHC has on its subsidiary savings association(s).

The information collected in response to line items 24, 25, and 26 is expected to be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (FOIA).[3] Although the remainder of the FR 2320 is generally made available to the public upon request, a reporting SLHC may request confidential treatment for responses to other items pursuant to exemption 4 of the FOIA if those responses contain nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.[4]

Current actions: On November 23, 2022, the Board published a notice in the **Federal Register** (86 FR 66554) requesting public comment for 60 days on the extension, without revision, of the FR 2320. The comment period for this notice expired on January 24, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–04346 Filed 3–1–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1467a(b)(2).

[2] *Id.*

[3] 5 U.S.C. 552(b)(4).

[4] *Id.*

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2021–0001; Sequence No. 16]

Submission for OMB Review; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: General Services Administration.

ACTION: Notice; request for comment.

SUMMARY: The General Services Administration (GSA) has under OMB review the following proposed Information Collection Request ''Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)'' for approval under the Paperwork Reduction Act (PRA).

DATES: *Submit comments on or before:* April 1, 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: Requests for additional information should be directed to Camille Tucker, U.S. General Services Administration, 1800 F Street NW, Washington, DC 20405, via phone at 202–603–2666, or email to *customerexperience@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.performance.gov/cx/a11-280.pdf.*

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

GSA will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov.* Summaries of customer research and user testing activities may be included in public-facing customer journey maps or summaries.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Action: New Collection of Information.

Type of Review: New.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this new collection. GSA will provide refined estimates of burden in subsequent notices.

Average Expected Annual Number of Activities: Approximately five types of customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

Average Number of Respondents per Activity: 1 response per respondent per activity.

Annual Responses: 2,001,550.

Average Minutes per Response: 2 minutes—60 minutes, dependent upon activity.

Burden Hours: GSA requests approximately 101,125 burden hours.

Request for Comments: GSA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 of this information collection; they also will become a matter of public record.

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. 2022–04307 Filed 3–1–22; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22–004: Research Grants To Prevent Firearm-Related Violence and Injuries; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22–004, Panel A: Research Grants to Prevent Firearm-Related Violence and Injuries; April 4–5, 2022; CE22–004, Panel B1: Research Grants to Prevent Firearm-Related Violence and Injuries; April 6–8, 2022; CE22–004, Panel B2: Research Grants to Prevent Firearm-Related Violence and Injuries; April 6–8, 2022. The meeting was published in the **Federal Register** on February 16, 2022, Volume 87, Number 32, page 8841.

The meeting is being amended to correct the meeting dates and should read as follows:

CE22–004, Panel A: Research Grants to Prevent Firearm-Related Violence and Injuries; April 4–5, 2022; CE22–004, Panel B1: Research Grants to Prevent Firearm-Related Violence and Injuries; April 6–7, 2022; and CE22–004, Panel B2: Research Grants to Prevent Firearm-Related Violence and Injuries; April 6–7, 2022. The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mikel Walters, Ph.D., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–04340 Filed 3–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22–009, Rigorous Evaluation of Community-Level Substance Use and Overdose Prevention Frameworks That Incorporate ACEs-Related Prevention Strategies; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel CE22–009, Rigorous Evaluation of Community-Level Substance Use and Overdose Prevention Frameworks that Incorporate ACEs-Related Prevention Strategies; April 26–27, 2022, 8:30 a.m.–5:30 p.m. EDT, via Web Conference, in the original FRN. The meeting was published in the **Federal Register** on January 14, 2022, Volume 87, Number 10, page/s/2439.

The meeting is being amended to change the meeting date and should read as follows:

CE22–009, Rigorous Evaluation of Community-Level Substance Use and Overdose Prevention Frameworks that Incorporate ACEs-Related Prevention Strategies: April 26, 2022.

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Aisha L. Wilkes, M.P.H., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341, Telephone (404) 639–6473, *AWilkes@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–04341 Filed 3–1–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0223]

Submission for OMB Review; State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) requests a three-year extension of the State Self-Assessment Review and Report with minor revisions. The information collected in the reports assists state child support enforcement agencies and OCSE in determining whether the agencies meet federal child support performance requirements. The current Office of Management and Budget (OMB) approval expires April 30, 2022.

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: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: State child support agencies are statutorily required to annually assess the performance of their child support enforcement programs and to provide a report of the findings to the Secretary of HHS. The information collected in the State Self-Assessment Review and Report is a management tool used to determine if states are in compliance with federal child support mandates, to help states evaluate their programs, and to assess their performances.

Respondents: States and territories.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of annual respondents	Total number of annual responses per respondent	Average annual burden hours per response	Annual burden hours
State Self-Assessment Review and Report (SAR) (SAR Reporting Format and Instructions)	54	1	8	432

Authority: 42 U.S.C. 654(15)(A); 45 CFR 308.1(e).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–04315 Filed 3–1–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0320]

Submission for OMB Review; Tribal Child Support Enforcement Annual Data Report

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the form OCSE–75—Tribal Child Support Enforcement Annual Data Report (OMB #0970–0320, expiration 01/31/2023). There are 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: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, tribes administering child support enforcement programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report as part of the OCSE–75 report and submit it annually. Changes made to the report were agreed to based on several workgroup meetings attended by both OCSE and tribal child support directors. These changes include clarifying data points and definitions.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for child support enforcement in each tribe.

Annual Burden Estimates: Due to the timing required to make system updates to incorporate proposed changes, the current form will be used for fiscal year (FY) 2022 reporting, and the revised form will be implemented beginning FY 2023 reporting.

Instrument	Total number of respondents	Total number of responses per respondent (over 3 years)	Average burden hours per response	Total burden hours	Annual burden hours
OCSE–75 for FY 2022	60	1	40	2,400	2,400

Instrument	Total number of respondents	Total number of responses per respondent (over 3 years)	Average burden hours per response	Total burden hours	Annual burden hours
OCSE–75 for FY 2023 and forward	61	2	40	4,880	2,440

Average Annual Burden Hours: 2,427.

Authority: Title IV–D of the Social Security Act as required by 45 CFR 309.170(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–04372 Filed 3–1–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1317]

Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders.'' This guidance document describes the processes available to mammography facilities to request additional review of an adverse appeals decision on a facility's accreditation, and/or a suspension or revocation of certificate, and/or a patient and physician notification order. This guidance supersedes section 4.5 of the Center for Devices and Radiological Health (CDRH) Appeals Processes guidance document dated July 2, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on March 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1317 for ''Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation

Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Abiy Desta, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4282, Silver Spring, MD 20993–0002, 301–796–5699.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Mammography Quality Standards Act (42 U.S.C. 263b), all mammography facilities, except facilities of the Department of Veteran Affairs, must be accredited by an approved accreditation body and certified by FDA (or an approved State certification agency) to provide mammography services (42 U.S.C. 263b(b)(1) and (d)(1)(iv)). For a facility to be certified it must meet certain requirements including: (1) Be accredited by an FDA-approved accreditation body; (2) undergo periodic review of its clinical images by its accreditation body; (3) have an annual survey by a medical physicist; (4) meet federally developed quality standards for personnel qualifications, equipment, radiation dose, quality assurance programs, recordkeeping, and reporting; and (5) undergo periodic inspection to assure it meets the federally developed quality standards.

This guidance document describes the processes available to mammography facilities to request additional review of an adverse appeals decision on a facility's accreditation and/or a suspension or revocation of certificate, and/or a patient and physician notification order. It provides general information about each process, as well as guidance on how to submit related requests to the Division of Mammography Quality Standards and FDA. This guidance supersedes section 4.5 of the CDRH Appeals Processes guidance document dated July 2, 2019 (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/center-devices-and-radiological-health-cdrh-appeals-processes*).

A notice of availability of the draft guidance appeared in the **Federal Register** of July 21, 2020 (85 FR 44097). FDA received no comments and no substantive changes have been made in the final guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all CDRH guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* and *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Appeal Options Available to Mammography Facilities Concerning Adverse Accreditation Decisions, Suspension/Revocation of Certificates, or Patient and Physician Notification Orders'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 19004 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulation and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
''Guidance for Industry and Food and Drug Administration Staff; Center for Devices and Radiological Health Appeals Processes''.	Appeals Process	0910–0738
900	Mammography Facilities	0910–0309

Dated: February 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04405 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0482]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Animal Drug Applications and Veterinary Master Files

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 collection of

information associated with new animal drug applications and veterinary master files.

DATES: Submit either electronic or written comments on the collection of information by May 2, 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 May 2, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 2, 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–2019–N–0482 for ''New Animal Drug Applications and Veterinary Master Files.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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.

New Animal Drug Applications and Veterinary Master Files

OMB Control Number 0910–0032—Extension

This information collection supports implementation of section 512 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b), which governs new animal drugs. Agency regulations in 21 CFR part 514 and associated regulations in 21 CFR part 558, establish format and content requirements regarding new animal drug application (NADA) submissions, as well as provide for pre-application submissions, amended applications, and application supplements. This information collection also supports implementation of section 571 of the FD&C Act (21 U.S.C. 360ccc) regarding application for conditional approval of new animal drug (CNADA) submissions. As set forth in the FD&C Act and

Agency regulations, requisite elements include safety and effectiveness data, proposed labeling, product manufacturing information, and, where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. Applications must be prepared as appropriate to support the particular submission. Respondents to the information collection are persons developing, manufacturing, and/or researching new animal drugs.

We developed Form FDA 356v (Application for Approval of a New Animal Drug (or Submission to Support New Animal Drug Approval)) to provide a uniform format for submitting requisite information and to ensure efficient processing by the Agency. Form FDA 356v is available for download from our website at *https://www.fda.gov/about-fda/reports-manuals-forms/forms.* We also develop Agency guidance documents that may assist respondents with understanding NADA/CNADA requirements and related information collection activity. This includes FDA Guidance #152,[1] which outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs and includes Agency recommendations in this regard.

Under section 512(b)(3) of the FD&C Act, any person intending to file a NADA or supplemental NADA or a request for an investigational exemption under section 512(j) of the FD&C Act may request a conference prior to making a submission. Section 514.5 of our regulations (21 CFR 514.5) sets forth procedures for presubmission conferences and describes documentation associated with making requests, and preparing for and conducting meetings. We encourage sponsors to submit data for review at the most appropriate and productive times in the drug development process. Rather than submitting all data for review as part of a complete application, we have found that the submission of data supporting discrete technical sections during the investigational phase is most appropriate and productive. This ''phased review'' of data submissions has created efficiencies for us and the animal pharmaceutical industry.

We also encourage, as appropriate, the submission of a veterinary master file (VMF). For more information on VMFs, we invite you to visit *https://www.fda.gov/animal-veterinary/development-approval-process/veterinary-master-files.* A VMF provides detailed information used in support of application submissions. Questions regarding VMF submissions may be directed to our Center for Veterinary Medicine at *cvmesubmitter@fda.hhs.gov.* We have found that utilizing VMFs has increased the efficiency of the animal drug development and animal drug review processes for FDA and the animal pharmaceutical industry, providing for the confidential exchange of information with FDA and a process for reporting information outside of a NADA/CNADA or an investigational new animal drug file, as well as an opportunity for increased communication with FDA during the early stages of product development. A holder of a VMF may also authorize other parties to reference information included in the VMF without disclosing information in the file to those parties. VMFs can be used as repositories for information that can be referenced in multiple submissions to the Agency.

Section 558.5(i) of FDA regulations (21 CFR 558.5(i)) describes the procedure for requesting a waiver of the labeling requirements in § 558.5(h) in the event that there is evidence to indicate that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed.

Finally, section 571 of the FD&C Act establishes requirements for the conditional approval of certain drugs[2] and the procedures for submitting applications for conditional approval. Although FDA receives fewer than one application submission under section 571 of the FD&C Act annually when averaged over a 3-year period, we use a placeholder of one response and 1 hour annually to account for the burden associated with these submissions.

Information collection associated with NADAs/CNADAs and related submissions is necessary to ensure that new animal drugs are in compliance with sections 512(b)(1) and 571 of the FD&C Act. We review the information, including data, labeling, and manufacturing controls and procedures, to evaluate the safety and effectiveness of the proposed new animal drug.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§§ 514.1 and 514.6; applications and amended applications.	187	0.07	13	212	2,756
§§ 514.1(b)(8) and 514.8(c)(1);[2] evidence to establish safety and effectiveness.	187	0.44	82	90	7,380
§ 514.5(b), (d), and (f); requesting presubmission conferences.	187	0.67	125	50	6,250
§ 514.8(b); manufacturing changes to an approved application.	187	2	374	35	13,090
§ 514.8(c)(1); labeling and other changes to an approved application.	187	0.06	11	71	781
§ 514.8(c)(2) and (3); labeling and other changes to an approved application.	187	0.84	157	20	3,140
§ 514.11; submission of data studies and other information.	187	0.13	24	1	24
§ 558.5(i); requirements for liquid medicated feed	187	0.01	2	5	10
Applications for conditional approval submitted under section 571 of the FD&C Act.	1	1	1	1	1

[1] Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cvm-gfi-152-evaluating-safety-antimicrobial-new-animal-drugs-regard-their-microbiological-effects.*

[2] Animal drugs intended for use in minor species, minor use in major species, or for serious or life-threatening conditions or unmet animal or human health needs where a demonstration of effectiveness would require a complex or particularly difficult study or studies.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Form FDA 356V	187	36.5	6,825	0.75 (45 minutes)	5,118
VMF submissions	15	1	15	20	300
Total			7,628		38,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach to assessing antimicrobial concerns as part of the overall preapproval safety evaluation.

Although we have characterized the information collection activity as a reporting burden, we include in our estimate time required for searching data sources, and preparing and maintaining necessary and applicable records. As stated above, although we receive fewer than one submission annually when averaged over a 3-year period, we attribute one response and 1 hour annually to account for CNADA submissions

We have adjusted our estimate of the information collection to reflect a decrease in burden associated with application submissions in acknowledgement of respondents' preference in using FDA's ''eSubmitter'' system, which automatically generates Form FDA 356v and allows respondents to complete the form and submit applications and associated information electronically.

Dated: February 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04373 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0836]

Pre-Launch Activities Importation Requests; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Pre-Launch Activities Importation Requests (PLAIR).'' This guidance finalizes and updates the draft guidance of the same title issued on July 24, 2013. This guidance finalizes FDA's approach for overseeing requests regarding the importation of unapproved finished dosage form drug products by applicants preparing products for market launch based on anticipated approval of a pending new drug application (NDA) or an abbreviated new drug application (ANDA). This guidance also applies to biologics licensing applications (BLAs) regulated by the Center for Drug Evaluation and Research. This guidance further describes the procedures for making these requests and FDA's actions on such requests. Finalizing this policy will help increase efficiencies in ensuring timely access to drug products upon approval.

DATES: The announcement of the guidance is published in the **Federal Register** on March 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0836 for ''Pre-Launch Activities Importation Requests (PLAIR).'' 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kathleen Joyce, Center for Drug Evaluation and Research, Bldg. 51, Rm. 4236, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *Kathleen.Joyce@fda.hhs.gov,* or PLAIR Program, Office of Drug Security, Integrity and Recalls (ODSIR), *CDER-OC-PLAIR@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Pre-Launch Activities Importation Requests (PLAIR).'' Historically, when applicants with a pending NDA, ANDA, or CDER-regulated BLA sought to import unapproved finished dosage form drug products into the United States in preparation for market launch, we considered such requests, informally referred to as ''PLAIRs,'' on a case-by-case basis. In July 2013, FDA issued a draft guidance announcing the Agency's approach for overseeing the import of some unapproved finished dosage form drug products regulated by CDER prior to their approval to facilitate the availability of those products to patients upon approval. This guidance largely tracks the July 2013 draft guidance.

An applicant with a pending NDA, ANDA, or BLA that is nearing an FDA decision may submit a PLAIR to FDA seeking permission to import the unapproved finished dosage form drug product that is the subject of the application to prepare the product for market launch. If FDA grants the PLAIR, FDA intends to detain the unapproved finished dosage form drug product when the product covered by the PLAIR is offered for import. FDA will, however, consider the PLAIR submission to mean that the owner or consignee has requested to recondition the drug, as specified in the PLAIR request. FDA will thus detain the drug for up to 6 months pending a decision on the underlying application. The Agency will release the drug product if, and when, FDA approves the underlying NDA, BLA, or ANDA within 6 months and the conditions of the PLAIR are otherwise met. If FDA refuses to approve the application or 6 months otherwise elapse without FDA approval, FDA may determine that the product is subject to refusal.

FDA's granting of a PLAIR does not represent an implicit or explicit statement of the approvability of the application. Rather, PLAIR facilitates the process of importing unapproved finished dosage form products to prepare for market launch based on the anticipated approval by FDA of the pending application. The PLAIR guidance outlines which products the PLAIR program covers, what information should be submitted to FDA in a PLAIR, when and how we recommend submitting a PLAIR, and the process for FDA's action on a PLAIR.

FDA considered comments received on the draft guidance as the guidance was finalized. One change we made in response to comments was to include recommended timeframes for earlier submission of certain PLAIR-eligible products subject to priority review.

This guidance finalizes the draft guidance entitled ''Pre-Launch Activities Importation Requests (PLAIR)'' issued on July 24, 2013 (78 FR 44572) and is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Pre-Launch Activities Importation Requests (PLAIR).'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The time required to complete this information collection is estimated to average 16 hours for the first submission, including the time to review instructions. We expect any additional PLAIRs submitted by the same firm to take less time. The collections of information pertaining to FDA's Pre-Launch Activities Importation Requests have been approved under OMB control number 0910–0046. The guidance also refers to other previously approved FDA collections of information. The collections of information in 21 CFR part 314 relating to new drug applications and abbreviated new drug applications have been approved under OMB control number 0910–0001; the collections of information in part 601 relating to biologics license applications have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 207 relating to domestic and foreign facility registration, including assignment of a national drug code, have been approved under OMB control number 0910–0045; and the collections of information in parts 210 and 211 pertaining to current good manufacturing practice requirements have been have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 23, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04155 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5572]

Inclusion of Older Adults in Cancer Clinical Trials; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Inclusion of Older Adults in Cancer Clinical Trials.'' This guidance provides recommendations regarding the inclusion of older adult patients in clinical trials of drugs for the treatment of cancer. For the purpose of this final guidance, older adults are those age 65 years and older. The final guidance emphasizes the particular importance of including adults over age 75 years in cancer clinical trials. Specifically, this final guidance includes recommendations for including an adequate representation of older adults in cancer clinical trials to better enable evaluation of the benefit-risk profile of cancer drugs in this population. This guidance finalizes the draft guidance of the same title issued on March 6, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on March 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5572 for ''Inclusion of Older Adults in Cancer Clinical Trials.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Bindu Kanapuru, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2119, Silver Spring, MD 20993–0002, 240 402–1279.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Inclusion of Older Adults in Cancer Clinical Trials.'' This final guidance provides recommendations for stakeholders, including sponsors and institutional review boards, responsible for the development and oversight of clinical trials regarding the inclusion of older adult patients (*i.e.,* age 65 years and older) in clinical trials of drugs for the treatment of cancer. The final guidance emphasizes the particular importance of including adults over age 75 years in cancer clinical trials.

Enrolling an adequate representation of the range of patients in a clinical trial that may be exposed to a drug after approval can maximize the generalizability of the trial results. It provides the ability to understand the drug's benefit-risk profile across the patient population likely to use the drug in clinical practice. Including information in the labeling describing use in older adults helps to promote the safe and effective use of these products and better informs treatment decisions in clinical practice.

Older adults are underrepresented in cancer clinical trials despite

representing a growing segment of the population of cancer patients. Therefore, more information is needed to better inform treatment decisions for older adults with cancer. The issue persists in oncology despite FDA's efforts to increase the inclusion of older adults in clinical trials.

The guidance recommends that sponsors of cancer trials consider the age demographics of their target population early in development and that a strategy for inclusion of older adults be informed by any known information for older adults. The final guidance includes recommendations for inclusion of older adults related to early clinical development; clinical trials, including considerations for trial design, recruitment, and developing and reporting discrete age subgroups; and the postmarket setting.

This guidance finalizes the draft guidance entitled ''Inclusion of Older Adults in Cancer Clinical Trials'' issued on March 6, 2020 (85 FR 13167). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include capture of comorbidity information, clarification that this guidance applies to both small and large studies, added guidance on decentralization and recruitment efforts for community oncologists, an improved definition of adequate representation in a study trial, clarification of trial design stratification, and added references to other guidances.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Inclusion of Older Adults in Cancer Clinical Trials.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under 0910–0338; and the collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04399 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1246]

Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry #258 entitled ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds.'' Tracers are ingredients added to animal food, medicated feed, and Type A medicated articles to identify a particular product. The purpose of this document is to provide guidance on the use of tracers in animal food, medicated feeds, and Type A medicated articles. When finalized, this guidance will replace Compliance Policy Guide (CPG) Sec. 680.100 Tracers in Animal Feed.

DATES: Submit either electronic or written comments on the draft guidance by May 2, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–D–1246 for ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The

second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding tracers used in animal food:* Diego Paiva, Center for Veterinary Medicine (HFV–229), Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 240–402–6785, *Diego.Paiva@fda.hhs.gov; regarding tracers used in animal drug products:* Rebecca Owen, Center for Veterinary Medicine (HFV–141), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240–402–0670, *Rebecca.Owen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #258 entitled ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds.'' FDA's Center for Veterinary Medicine receives inquiries regarding the use of ''tracers'' in animal food, medicated feeds, and Type A medicated articles. Tracers are ingredients added to these products to identify a particular product. The purpose of this document is to provide guidance on the use of tracers in animal food, medicated feeds, and Type A medicated articles. When finalized, this guidance will replace CPG Sec. 680.100 Tracers in Animal Feed.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the use of tracers in animal food, Type A medicated articles, and medicated feeds. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 501.22 have been approved under OMB control number 0910–0721. The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04370 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2777]

Expansion Cohorts: Use in First-in-Human Clinical Trials To Expedite Development of Oncology Drugs and Biologics; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Expansion Cohorts: Use in First-in-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' The purpose of this guidance is to provide advice to sponsors regarding the design and conduct of first-in-human (FIH) clinical trials intended to efficiently expedite the clinical development of oncology drugs, including biological products, through multiple expansion cohort trial designs. This guidance finalizes the draft guidance of the same name issued in August 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on March 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–2777 for ''Expansion Cohorts: Use in First-in-Human Clinical Studies to Expedite Development of Oncology Drugs and Biologics.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lee Pai-Scherf, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2314, Silver Spring, MD 20993–0002, 240–402–7911; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Expansion Cohorts: Use in First-in-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' The purpose of this guidance is to provide advice to sponsors regarding the design and conduct of FIH clinical trials intended to efficiently expedite the clinical development of oncology drugs, including biological products, through multiple expansion cohort trial designs. These are trial designs that employ multiple, concurrently accruing, subject cohorts, where individual cohorts assess different aspects of the safety, pharmacokinetics, and antitumor activity of the drug product. This guidance provides FDA's current thinking regarding (1) characteristics of drug products best suited for consideration for development under a multiple expansion cohort trial; (2) information to include in investigational new drug application submissions to support the use of individual cohorts; (3) when to interact with FDA on planning and conducting multiple expansion cohort trials; and (4) safeguards to protect subjects enrolled in FIH expansion cohort trials.

This guidance finalizes the draft guidance of the same name issued August 13, 2018 (83 FR 40055). Changes made to the guidance took into consideration public comments received. Major changes from the draft to the final guidance include the following:

• Language added stating that designs other than Simon two-stage (*e.g.,* Bayesian statistical design) may be used to assess antitumor activity in a nonrandomized cohort to limit the number of subjects that could be exposed to a potentially ineffective drug.

• Statement added to indicate that in trials of limited sample size, a safety assessment committee could be a group within the sponsor's organization alone that is not otherwise involved in trial conduct or management or with external representation in lieu of an independent data monitoring committee.

• Language added to state that development of an age-appropriate formulation may be necessary for pediatric populations.

• Minor changes added to various sections to clarify criteria for drug products suitable for investigation in clinical trials with FIH multiple expansion cohorts, the procedure for obtaining a risk assessment if an in vitro diagnostic will be used for patient management, and the information to be submitted to the FDA to support amendments to expand the protocol.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Expansion Cohorts: Use in First-in-Human Clinical Trials to Expedite Development of Oncology Drugs and Biologics.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA.

The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 58 for good laboratory practices for nonclinical laboratory studies have been approved under OMB control number 0910–0119. The collections of information in §§ 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in 21 CFR part 312 that support FDA's regulations for investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

The collections of information in biologics license applications submitted under 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

The collections of information in the guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring'' (available at *https://www.fda.gov/media/116754/download*) have been approved under OMB control number 0910–0733. The collections of information in the guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' (available at *https://www.fda.gov/media/86377/download*) have been approved under OMB control number 0910–0765.

The collections of information in the International Council for Harmonisation guidance for industry entitled ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1)'' (available at *https://www.fda.gov/media/93884/download*) have been approved under OMB control number 0910–0843. The collections of information in the guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' (available at *https://www.fda.gov/media/109951/download*) have been approved under OMB control number 0910–0429.

The collections of information regarding evaluation of the program for enhanced review transparency and communication for new molecular entity new drug applications and original biologics license applications in the Prescription Drug User Fee Act have been approved under OMB control number 0910–0746.

The collections of information described in the guidance for industry and review staff entitled ''Formal Dispute Resolution: Sponsor Appeals Above the Division Level'' (available at *https://www.fda.gov/media/126910/download*) have been approved under OMB control number 0910–0430.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04397 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3292]

Master Protocols: Efficient Clinical Trial Design Strategies To Expedite Development of Oncology Drugs and Biologics; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Master Protocols: Efficient Clinical Trial Design Strategies to Expedite Development of Oncology Drugs and Biologics.'' This guidance provides advice to sponsors of drugs and biologics for cancer treatment regarding the design and conduct of clinical trials, other than first-in-human trials, intended to simultaneously evaluate more than one investigational drug and/or more than one cancer type within the same overall trial structure (master protocols) in adult and pediatric cancers. In contrast to traditional trial designs, where a single drug is tested in a single disease population in one clinical trial, master protocols use a single infrastructure, trial design, and protocol to simultaneously evaluate multiple drugs and/or disease populations in multiple substudies, allowing for efficient and accelerated drug development.

DATES: The announcement of the guidance is published in the **Federal Register** on March 2, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2018–D–3292 for ''Master Protocols: Efficient Clinical Trial Design Strategies to Expedite Development of Oncology Drugs and Biologics.'' Received comments will be placed in the docket

and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lee Pai-Scherf, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2314, Silver Spring, MD 20993, 301–796–3400; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Master Protocols: Efficient Clinical Trial Design Strategies to Expedite Development of Oncology Drugs and Biologics.''

This guidance provides recommendations to sponsors of drugs or biologics for the treatment of cancer regarding the design and conduct of clinical trials intended to simultaneously evaluate more than one investigational drug and/or more than one cancer type within the same overall trial structure (master protocols) in adult and pediatric cancers. In general, the recommended phase 2 dose should have been established for an investigational drug or drugs evaluated in a master protocol. It also describes aspects of master protocol designs and trial conduct and related considerations, such as biomarker codevelopment and statistical analysis considerations, and provides advice on the information that sponsors should submit to FDA and on how sponsors can interact with FDA to facilitate efficient review.

This guidance does not address all issues relating to clinical trial design, statistical analysis, or the biomarker development process. Those topics are addressed in the International Council for Harmonisation (ICH) guidances for industry ''E9 Statistical Principles for Clinical Trials'' and ''E10 Choice of Control Group and Related Issues in Clinical Trials'' and the guidance for industry and FDA staff ''In Vitro Companion Diagnostic Devices.''

This guidance finalizes the draft guidance of the same name issued on October 1, 2018 (83 FR 49398). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include adding information about a dose-finding or safety lead-in component in basket trials when evaluating an investigational drug combination and comparison between experimental arms in umbrella trials and acceptable statistical approaches. Revisions were also made to various sections of the draft guidance to clarify the information to be submitted to FDA to support amendments to expand the protocol, the frequency of cumulative safety updates, the role of ad hoc institutional review board meetings, the role of the safety assessment committee, and informed consent requirements.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Master Protocols: Efficient Clinical Trial Design Strategies to Expedite Development of Oncology Drugs and Biologics.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 314.50(d)(5) (clinical data section) and (d)(6) (statistical section) have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312, subpart B, for the submission of investigational new drug applications (INDs), including protocols, protocol amendments, and information amendments, have been approved under OMB control number 0910–0014. Sponsors may request comment and advice on an IND as well as request meetings with FDA under 21 CFR part 312, subpart C (OMB control number 0910–0014).

The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in parts 50 and 56 for the protection of human subjects and institutional review boards have been approved under OMB control numbers 0910–0130; Responsibilities of sponsors and investigators (21 CFR part 312, subpart D) are also covered under OMB control number 0910–0014; the collections of information in 21 CFR part 601 have been approved under

OMB control number 0910–0338; the collections of information in §§ 201.56 and 201.57 for the content and format requirements for labeling of human prescription drug and biological products have been approved under OMB control number 0910–0572.

In addition, the following collections of information in FDA's guidances have been approved by OMB (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents*):

- Collections in FDA's draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors and Applicants for PDUFA Products'' have been approved under OMB control number 0910–0429.
- Collections in FDA's guidance for industry entitled ''Special Protocol Assessment'' have been approved under OMB control number 0910–0470.
- Collections in FDA's guidance for industry entitled ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under OMB control number 0910–0581.
- Collections in FDA's guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring'' have been approved under OMB control number 0910–0733.
- Collections in FDA's guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' have been approved under OMB control number 0910–0765.
- Collections in FDA's guidance for industry entitled ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1)'' have been approved under OMB control number 0910–0843.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–04398 Filed 3–1–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Vaccines Federal Implementation Plan

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Infectious Disease and HIV/AIDS Policy.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services' Office of Infectious Disease and HIV/AIDS Policy in the Office of the Assistant Secretary for Health announces that the draft *Vaccines Federal Implementation Plan 2021–2025* is available for public comment. The *Vaccines Federal Implementation Plan* is a companion document to the *Vaccines National Strategic Plan 2021–2025* (VNSP), which was published in January 2021. The *Vaccines Federal Implementation Plan* is a compilation of federal agency immunization activities that collectively advance the goals of the VNSP. Its target audience is other federal agencies and external partners who work in the area of vaccination. The public will be interested in how the implementation plan documents federal agency efforts. It does not outline mandates or other COVID–19 response measures.

DATES: The public comment period for the Vaccines Federal Implementation Plan starts on February 28, 2022 at 9 a.m. ET and ends on March 29, 2022 at 5 p.m. ET. All comments must be received by 5 p.m. ET on March 29, 2022 to be considered.

ADDRESSES: All comments must be submitted electronically to *nvp.rfi@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: David Kim, MD, MA, Director, Division of Vaccines, Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room L616, Switzer Building, 330 C St. SW, Washington, DC 20024. Phone: 202–795–7697; Email: *nvp.rfi@hhs.gov.*

Dated: February 17, 2022.

David Kim,

Designated Federal Officer, Vaccines Federal Implementation Plan, Office of the Assistant Secretary for Health.

[FR Doc. 2022–04327 Filed 3–1–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. This meeting is a virtual meeting and is open to the public. Written comments will be accepted and registration is required to present oral comments.

DATES:

Meeting: Scheduled for April 19, 2022, 12:30 p.m.–2:00 p.m. Eastern Standard Time (EST). Ending times are approximate; meeting may end earlier or run later.

Written Public Comment Submissions: Deadline is April 12, 2022.

Registration for Oral Comments: Deadline is April 12, 2022.

ADDRESSES:

Meeting Web Page: The preliminary agenda, registration, and other meeting materials will be available at *https://ntp.niehs.nih.gov/go/165* by March 14, 2022.

Virtual Meeting: The URL for viewing the virtual meeting will be provided on the meeting web page the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Wolfe, Designated Federal Official for the BSC, Office of Policy, Review, and Outreach, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3209, Fax: 301–451–5759, Email: *wolfe@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION: The BSC will provide input to the NTP on programmatic activities and issues. The preliminary agenda topics include presentations on a contract concept: Bioinformatics Support for the NIEHS. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*) or

may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting web page.

Meeting Attendance Registration: The meeting is open to the public with time scheduled for oral public comments. Registration is not required to view the virtual meeting; the URL for the virtual meeting is provided on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*) the day before the meeting. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: NTP invites written public comments. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is April 12, 2022. Written public comments should be submitted through the meeting web page. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP web page, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The agenda allows for one formal public comment period on the agenda topics (up to 5 commenters total, up to 5 minutes per speaker per topic). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/165* by April 12, 2022. Oral comments will be received only during the formal comment period indicated on the preliminary agenda. Oral comments will only be by teleconference line. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration is on a first-come, first-served basis. Each organization is allowed one time slot per topic. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Commenters will be notified approximately one week before the meeting about the actual time allotted per speaker.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to *NTP-Meetings@icf.com* by April 12, 2022.

Meeting Materials: The preliminary meeting agenda will be available on the meeting web page (*https://ntp.niehs.nih.gov/go/165*) by March 14, 2022, and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, epidemiology, risk assessment, carcinogenesis, mutagenesis, cellular biology, computational toxicology, neurotoxicology, genetic toxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets periodically. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: February 24, 2022.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2022–04389 Filed 3–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: March 30, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 24, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04363 Filed 3–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: March 25, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 24, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–04359 Filed 3–1–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0024]

Entry/Immediate Delivery Application and ACE Cargo Release

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than April 1, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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 PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 55628) on October 06, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry/Immediate Delivery Application and ACE Cargo Release.

OMB Number: 1651–0024.

Form Number: CBP Forms 3461 and 3461 ALT.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including ''entry'' pursuant to 19 U.S.C. 1484, and ''immediate delivery'' pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 142.3, 142.16, 141.22, and 141.24. The forms and instructions for Form 3461 are accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3461&=Apply.*

Ace Cargo Release (formerly referred to as ''Simplified Entry'') is a program for ACE entry summary filers in which importers or brokers may file ACE Cargo Release data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. The four optional data elements are: The container stuffing location, consolidator name and address, ship to party name and address, and the three Global Business Identifier (GBI) identifiers: (20-digit Legal Entity Identifier (LEI), 9-digit Data Universal Numbering System (DUNS), and 13-digit Global Location Number (GLN)) for the entry filer and the manufacturer/producer, seller and shipper, and optionally, for the exporter, distributor and packager. The GBI identifiers are the new optional data elements that are being collected to better identify the legal entity that is interacting with CBP. The data collected under the ACE Cargo Release program is

intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at *http://www.cbp.gov/trade/ace/features*.

It should be noted that ACE Cargo Release was previously called Simplified Entry.

Type of Information Collection: Form 3461 Entry/Immediate Delivery (Paper Only).

Estimated Number of Respondents: 12,307.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 12,307.

Estimated Time per Response: 15 minutes (0.25 hours).

Estimated Total Annual Burden Hours: 3,077.

Type of Information Collection: ACE Cargo Release: Form 3461, 3461ALT (Electronic Submission).

Estimated Number of Respondents: 9,810.

Estimated Number of Annual Responses per Respondent: 2,994.

Estimated Number of Total Annual Responses: 29,371,140.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 4,875,609.

Dated: February 24, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–04323 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0NEW]

Global Business Identifier (GBI)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; this is a new collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than April 1, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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 PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 55629) on October 06, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Global Business Identifier (GBI).

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: This is a new information collection.

Type of Review: New Information Collection.

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) is launching a Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC) which aims to determine a single identifier solution that will uniquely discern main legal entity and ownership; specific business and global locations; and supply chain roles and functions. Entry filers must signal their intent to participate in the GBI EPoC, by email as discussed in the **Federal Register** notice announcing the test, and must obtain and submit (or indicate that they are in the process of obtaining) all three GBI identifiers for their shippers, manufacturers and sellers, as part of their email. The identifiers provide additional information about trade entities and supply chain locations associated with U.S. imports, to CBP for enrollment into the GBI EPoC and, if selected, during the Entry process. The three identifiers are:

- Legal Entity Identifier (LEI)—managed and made available by the Global Legal Entity Identifier Foundation (GLEIF)
- Global Location Number (GLN)—owned and managed by GS1
- Data Universal Numbering System (DUNS)—owned and managed by Dun & Bradstreet (D&B)

GBI EPoC participants will also provide applicant information: Company/entity legal name, legal entity headquarters and/or manufacturing site address, business phone number (associated with provided address), company website, Manufacture/Shipper Identification Code (MID), and Authorized Economic Operator (AEO) identification number (optional).

Automated Broker Interface (ABI) filers (including brokers and self-filers) will be required to complete a GBI

enrollment process, via ABI, prior to submitting the identifiers on an electronic entry (CBP Form 3461). Filers are responsible for the associated costs to obtain all three identifiers and will submit each identifier for the following supply chain roles:

- Manufacturer/Producer (required)
- Shipper (required)
- Seller (required)
- Exporter (optional)
- Distributer (optional)
- Packager (optional)

Section 484 of the Tariff Act of 1930, as amended (19 U.S. Code 1484) and part 141, Code of Federal Regulations, title 19 (19 CFR part 141), pertain to the entry of merchandise and authorize CBP to require information that is necessary for CBP to determine whether merchandise may be released from CBP custody. Provisions of the U.S. Code and CBP regulations, in various parts and related to various types of merchandise, specify information that is required for entry. For reference, part 163, Code of Federal Regulations, Title 19 (19 CFR part 163 appendix A) refers to a wide variety of regulatory provisions for certain information that may be required by CBP.

By testing the identifiers CBP will take its first step in determining whether to amend regulations to mandate the GBI solution. Furthermore, CBP will understand the utility of collecting and/or combining the identifiers' data and will be able to make an informed decision on whether to mandate the use of the GBI solution as an alternative for the Manufacturer/Shipper Identification Code (MID).

Type of Information Collection: Electronic Submission of GBI Data and Enrollment Information.

Estimated Number of Respondents: 100.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 17.

Dated: February 24, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–04322 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–08; OMB Control No: 2535–0123]

30-Day Notice of Proposed Information Collection: Coronavirus Aid, Relief, and Economic Security (CARES) Act Reporting

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* April 1, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 5, 2021 at 86 FR 54995.

A. Overview of Information Collection

Title of Information Collection: CARES Act Reporting Information Collection Request.

OMB Approval Number: 2535–0123.

Type of Request: Reinstatement with change of a previously approved collections.

Form Number: NA.

Description of the need for the information and proposed use:

OMB Control Numbers

- 2506–0133
- 2506–0089
- 2506–0077

Other Affected Forms and Systems

- HUD–40110–C
- HUD–40110–D
- Integrated Disbursement and Information System (IDIS)
- Sage HMIS Reporting Repository

The change to the existing ICRs and renewal of the CARES Act Reporting ICR will enable HUD to collect from recipients of large covered funds, which are defined as CARES Act grants that exceed $150,000 in the aggregate, the quarterly information required to be in compliance with the requirements outlined in Section 15011 of the CARES Act.

This will revise and renew existing OMB control numbers 2506–0133, 2506–0089, and 2506–0077, to help improve compliance with CARES Act requirements. This information will be reported by the grant recipients to the program offices within HUD, then aggregated with the related information already approved.

A new information collection request under OMB control number 2353–0123 is also being submitted that will allow the collection of grant recipient reporting information through a reporting portal. This portal is in development, and upon completion will enable certain HUD programs to collect information in line with CARES Act requirements.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
CDBG	1,209	4	4,836	78.5	379,626	35.16	$13,347,650.16
ESG	2,360	4	9,440	12.75	120,360	39.96	4,809,585.60
HOPWA (HUD–40110–C)	128	4	512	41	20,992	25.35	532,147.20
HOPWA (HUD–40110–D)	116	4	464	55	25,520	25.35	646,932.00
IHBG	792	4	3,168	1	3,168	25	79,200.00

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
TBRA/Op Fund	1,230	4	4,920	2	9,840	35.16	345,974.40
Total	5,835	4	23,340		559,506		19,761,489.36

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) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) 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.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2022–04320 Filed 3–1–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–10]

30-Day Notice of Proposed Information Collection: Single Family Mortgage Insurance on Hawaiian Home Lands, OMB Control No.: 2502–0358

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: April 1, 2022.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 14, 2021 at 86 FR 71075.

A. Overview of Information Collection

Title of Information Collection: Single Family Insurance Hawaiian Home Lands.

OMB Approval Number: 2502–0358.

Type of Request: Extension of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use:

FHA offers mortgage insurance for mortgages on single-family dwellings under Title II of the National Housing Act (12 U.S.C. 1701, *et seq.*). The Housing and Urban Rural Recovery Act (HURRA), Public Law 98–181, amended the National Housing Act to add Section 247 (12 U.S.C. 1715z–12) to permit FHA to insure mortgages for properties located on Hawaiian Home Lands.

Section 247 requires that the Department of Hawaiian Homelands (DHHL) of the State of Hawaii (a) be a co-mortgagor; (b) guarantee or reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian Home Lands; or (c) offer other security acceptable to the Secretary. There are no changes to this program for this submission.

Under Article XII of the Constitution for the State of Hawaii, the DHHL is responsible for management of Hawaiian Home Lands for the benefit of native Hawaiians. The DHHL determines that the mortgagor meets its eligibility requirement as a native Hawaiian.

Respondents: Business or other for-profit (FHA-approved lenders).

Estimated Number of Respondents: 23.

Estimated Number of Responses: 606.

Frequency of Response: Monthly and on occasion.

Average Hours per Response: 0.58.

Total Estimated Burdens: 99 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond,; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2022–04388 Filed 3–1–22; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1557 (Final)]

Certain Mobile Access Equipment and Subassemblies Thereof From China; Supplemental Schedule for the Final Phase of Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 22, 2022.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco ((202) 205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective July 30, 2021, the Commission established a general schedule for the conduct of the final phase of its countervailing duty and antidumping duty investigations on certain mobile access equipment and subassemblies thereof (''mobile access equipment'') from China, following a preliminary determination by the U.S. Department of Commerce (''Commerce'') that imports of subject mobile access equipment from China were subsidized by the government of China (86 FR 41013, July 30, 2021). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 12, 2021 (86 FR 44402). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on October 12, 2021. All persons who requested the opportunity were permitted to participate.

Commerce issued a final affirmative countervailing duty determination with respect to mobile access equipment from China (86 FR 57809, October 19, 2021). The Commission subsequently issued its final determination that an industry in the United States is threatened with material injury by reason of imports of mobile access equipment from China provided for in subheadings 8427.10.80, 8427.20.80, 8427.90.00, and 8431.20.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'') that have been found by Commerce to be subsidized by the government of China (86 FR 70147, December 9, 2021).

Commerce issued a final affirmative antidumping duty determination with respect to mobile access equipment from China (87 FR 9576, February 22, 2022). Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigation on imports of mobile access equipment from China.

This supplemental schedule is as follows: The deadline for filing supplemental party comments on Commerce's final antidumping duty determination is March 7, 2022. Supplemental party comments may address only Commerce's final antidumping duty determination regarding imports of mobile access equipment from China. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of the current investigation will be placed in the nonpublic record on March 16, 2022, and a public version will be issued thereafter.

For further information concerning these investigations see the Commission's notices cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–04396 Filed 3–1–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1303]

Certain Products Containing Pyraclostrobin and Components Thereof Notice of Institution

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of BASF SE of Germany and BASF Corporation, Florham Park, New Jersey. A supplement to the Complaint was filed on February 15, 2022. The complaint, as supplemented, 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 products containing pyraclostrobin and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,816,392 (''the '392 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The

complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 24, 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 1–17 of the '392 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 ''products containing crystalline modification IV of pyraclostrobin and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

BASF SE, Carl-Bosch-Str. 38, 67056 Ludwigshafen, Germany

BASF Corporation, 100 Campus Drive, Florham Park, New Jersey 07932

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sharda Cropchem Ltd., Prime Business Park, 2nd Floor, Mumbai, Maharashtra, 400056, India

Sharda USA LLC, 34 E, Germantown Pike #227, Norristown, PA 19401

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the 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 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 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–04338 Filed 3–1–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–967]

Bulk Manufacturer of Controlled Substances Application: Sterling Pharma USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sterling Pharma USA, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary 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 May 2, 2022. Such persons may also file a written request for a hearing on the application on or before May 2, 2022.

ADDRESSES: The 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 *https://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 *https://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 January 12, 2022, Sterling Pharma USA, LLC, 1001 Sheldon Drive, Suite 101, Cary, North Carolina 27513–2078, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

In reference to drug codes 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug exclusively from hemp extract for distribution and sale to its customer. No

other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04324 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–968]

Importer of Controlled Substances Application: Janssen Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Janssen Pharmaceuticals Inc., has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 1, 2022. Such persons may also file a written request for a hearing on the application on or before April 1, 2022.

ADDRESSES: The 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 *https://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 *https://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. All requests for a hearing must 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. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 10, 2021, Janssen Pharmaceuticals Inc, 1440 Olympic Drive, Buildings 1–5 and 7–14, Athens, Georgia 30601–1645, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Thebaine	9333	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import intermediates classified under Tapentadol (9780) and Thebaine (9333) for further manufacturing to the controlled substances tapentadol and buprenorpine, respectively, prior to distribution to customers. The company plans to import Poppy Straw Concentrate (9670) to bulk manufacture other controlled substances. 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. 2022–04321 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–959]

Importer of Controlled Substances Application: Medi-Physics Inc. dba GE Healthcare

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Medi-Physics Inc. dba GE Healthcare has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY 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 1, 2022. Such persons may also file a written request for a hearing on the application on or before April 1, 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 December 16, 2021, Medi-Physics Inc. dba GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cocaine	9041	II
Ecgonine	9180	II

The company plans to import derivatives of the listed controlled substances to be used for the manufacture of a diagnostic product and reference standards. No other activity for these drug codes 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. 2022–04371 Filed 3–1–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Personal Identity Verification—ATF Form 8620.40

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 2, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Lakisha Gregory, Chief, Personnel Security Division, by mail at 99 New York Avenue NE, Mailstop 1.E–300, Washington, DC 20226, by email at *Lakisha.Gregory@atf.gov,* or by telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New Collection.

2. *The Title of the Form/Collection:* Personal Identity Verification.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 8620.40.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The Personal Identity Verification—ATF Form 8620.40 will be used to document identifying and citizenship information of a candidate for employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form once annually, and it will take approximately 5 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .833333 (5 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: February 25, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–04404 Filed 3–1–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0008]

Commercial Diving Operations Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified by the Commercial Diving Operations Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by May 2, 2022.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0008) for the Information Collection Request (ICR). OSHA will place all comments, including personal information in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance,

OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and incidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Commercial Diving Operations (CDO) Standard (29 CFR part 1910, subpart T) for general industry helps protect workers from the adverse health effects that may result from their involvement in CDO, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and designated representatives. The major information collection requirements of the CDO Standard include the following elements of the Standard.

§ 1910.401(b). Allows employers to deviate from the requirements of the subpart to the extent necessary to prevent or minimize a situation that is likely to cause death, serious physical harm, or major environmental damage. They must provide written notice to the OSHA Area Director within 48 hours and must describe the reason for and extent of the deviation.

§§ 1910.410(a)(3) and (a)(4). Employers must train all dive team members in cardiopulmonary resuscitation and first aid (*i.e.,* the American Red Cross standard course or equivalent). Additionally, employers must train dive team members exposed to hyperbaric conditions, or who control exposure of other workers to such conditions, in diving-related physics and physiology.

§§ 1910.420(a) and (b). Employers must develop and maintain a safe practices manual and make it available to each dive team member at the dive location. For each diving mode used at the dive location, the manual must contain: Safety procedures and checklists for diving operations; assignments and responsibilities of the dive team members; equipment procedures and checklists; and emergency procedures for fire, equipment failures, adverse environmental conditions, and medical illness and injury.

§ 1910.421(b). Employers are to keep at the dive location a list of telephone or call numbers for the following emergency facilities and services: An operational decompression chamber (if such a chamber is not at the dive location), accessible hospitals, available physicians and means of emergency transportation, and the nearest U.S. Coast Guard Rescue Coordination Center.

§ 1910.421(f). Requires employers to brief dive team members on the diving-related tasks they are to perform, safety procedures for the diving mode used at the dive location, any unusual hazards or environmental conditions likely to affect the safety of the diving operation, and any modifications to operating procedures necessitated by the specific diving operation. Before assigning diving-related tasks, employers must ask each dive team member about their current state of physical fitness, and inform the member about the procedure for reporting physical problems or adverse physiological effects during and after the dive.

§ 1910.421(h). If the diving operation occurs in an area capable of supporting marine traffic and occurs from a surface other than a vessel, employers are to display a rigid replica of the international code flag ''A'' that is at least one meter in height so that it is visible from any direction; the employer must illuminate the flag during night diving operations.

§ 1910.422(e). Employers must develop and maintain a depth-time profile for each diver that includes, as appropriate, any breathing gas changes or decompression.

§§ 1910.423(b)(1)(ii) through (b)(2). Requires the employer to: Instruct the diver to report any physical symptoms or adverse physiological effects, including symptoms of decompression sickness (DCS); advise the diver of the location of a decompression chamber that is ready for use; and alert the diver to the potential hazards of flying after diving. For any dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer must also inform the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive or any decompression or treatment associated with the dive.

§ 1910.423(d). Employers are to record and maintain the following information for each diving operation: The names of dive-team members; date, time, and location; diving modes used; general description of the tasks performed; an estimate of the underwater and surface conditions; and the maximum depth and bottom time for each diver. In addition, for each dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer must record and maintain the following information for each diver: Depth-time and breathing gas profiles; decompression table designation (including any modifications); and elapsed time since the last pressure exposure if less than 24 hours or the repetitive dive designation. If the dive results in DCS symptoms, or the employer suspects that a diver has DCS, the employer must record and maintain a description of the DCS symptoms (including the depth and time of symptom onset) and the results of treatment.

§ 1910.423(e). Requires employers to assess each DCS incident by: Investigating and evaluating it based on the recorded information, consideration of the past performance of the decompression profile used, and the diver's individual susceptibility to DCS; taking appropriate corrective action to reduce the probability of a DCS recurrence; and, within 45 days of the DCS incident, preparing a written evaluation of this assessment, including any corrective action taken.

§§ 1910.430(a), (b)(4), (c)(1)(i) through (c)(1)(iii), (c)(3)(i), (f)(3)(ii), and (g)(2). Employers must record by means of tagging or a logging system any work performed on equipment, including any modifications, repairs, tests, calibrations, or maintenance performed on the equipment. This record is to include the date and description of the work, as well as the name or initials of the individual who performed the work.

Employers must test two specific types of equipment, including, respectively: The output of air compressor systems used to supply

breathing air to divers for air purity every six months by means of samples taken at the connection to the distribution system; and breathing-gas hoses at least annually at one and one-half times their working pressure. Employers must mark each umbilical (*i.e.,* separate lines supplying air and communications to a diver, as well as a safety line, tied together in a bundle), beginning at the diver's end, in 10-foot increments for 100 feet, then in 50-foot increments thereafter. Employers must also regularly inspect and maintain mufflers located in intake and exhaust lines on decompression chambers and test depth gauges using dead-weight testing, or calibrate the gauges against a master reference gauge; such testing or calibration is to occur every six months or if the employer finds a discrepancy larger than two percent of the full scale between any two equivalent gauges. Employers must make a record of the tests, calibrations, inspections, and maintenance performed on the equipment.

§§ 1910.440(a)(2) and (b). Employers must record any diving-related injuries or illnesses that result in a dive-team member remaining in the hospital for at least 24 hours. This record is to describe the circumstances of the incident and the extent of any injuries or illnesses.

Employers must make any record required by the Subpart available, on request, for inspection and copying to an OSHA compliance officer or to a representative of the National Institute for Occupational Safety and Health (NIOSH). Employers are to provide workers, their designated representatives, and OSHA compliance officers with exposure and medical records generated under the Subpart in accordance with § 1910.1020 (''Access to worker exposure and medical records''); these records include safe practices manuals, depth-time profiles, diving records, DCS incident assessments, and hospitalization records. Additionally, employers must make equipment inspection and testing records available to workers and their designated representative on request.

Employers must retain these records for the following periods: Safe practices manuals, current document only; depth-time profiles, until completing the diving record or the DCS incident assessment; diving records, one year, except five years if a DCS incident occurred during the dive; DCS incident assessments, five years; hospitalization records, five years; and equipment inspections and testing records, current tag or log entry until the employer removes the equipment from service.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

The agency is requesting an adjustment increase in burden from 67,168 hours to 170,806 hours, a difference of 103,638 hours. The increase in burden is due to the increase in the number of professional divers going from 3,280 to 3,460 in which increased the number of affected facilities.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Commercial Diving Operations Standard (29 CFR part 1910, subpart T).

OMB Control Number: 1218–0069.

Affected Public: Business or other for-profits.

Number of Respondents: 1,153.

Number of Responses: 1,397,799.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 170,806.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by hand, express mail, messenger, and courier service, all comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

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

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–04367 Filed 3–1–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0032]

Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Construction Standards on Posting Emergency Telephone Numbers and Maximum Safe Floor Load Limits.

DATES: Comments must be submitted (postmarked, sent, or received) by May 2, 2022.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0032) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employment has been tested and is in safe operating condition.

Two construction standards, ''Medical Services and First Aid'' (§ 1926.50), and ''General Requirements for Storage'' (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to conspicuously post emergency telephone numbers for physicians, hospitals, or ambulances at their worksites if 911 emergency telephone service is not locally available; in the event that a worker has a serious injury at a worksite, this posting requirement helps expedite emergency medical treatment of the worker. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures under construction, unless the floors or slabs are on grade (sitting on the ground). This provision prohibits employers from overloading floors in areas used to store material and equipment where a structure's floors are not supported directly by the ground. This requirement is intended to prevent floor collapses which could seriously injure or kill workers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the two construction standards, ''Medical Services and First Aid'' paragraph (f) of § 1926.50, and ''General Requirements for Storage'' paragraph (a)(2) of § 1926.250. The agency is requesting an adjustment increase in burden hours from 36,919 hours to 55,184 hours, a difference of 18,265 hours. This increase is due to the increase in the number of construction sites from 707,776 to 885,922 construction sites.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Construction Standards on the Posting of Emergency Telephone Numbers and Floor Load Limits (29 CFR 1926.50 and 29 CFR 1926.250).

OMB Control Number: 1218–0093.

Affected Public: Business or other for-profits.

Number of Respondents: 885,922.

Number of Responses: 263,262.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 55,184.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0032). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 15, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–04313 Filed 3–1–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Representative Fee Request (CA–143/CA–155)

AGENCY: Office of Workers' Compensations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Representative Fee Request'' (CA–143/CA–155). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 2, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA). The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent must present the information in any format which is convenient and which meets all the required information criteria. This information collection is currently approved for use through July 31, 2022.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(b) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Number 1240–0049. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive

statements/information in any comments.

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Revision.

Title of Collection: Representative Fee Request.

Form: CA–143/CA–155.

OMB Number: 1240–0049.

Affected Public: Business or other for profit, Individuals or households.

Estimated Number of Respondents: 4,035.

Frequency: On occasion.

Total Estimated Annual Responses: 4,035.

Estimated Average Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2018.

Total Estimated Annual Other Cost Burden: 0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–04366 Filed 3–1–22; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Application for Self-Insurance Under the Black Lung Benefits Act: Application or Renewal of Self-Insurance Authority (CM–2017), Financial Summary for Self-Insured Operators (CM–2017a) and Report of Claims Information for Self-Insured Operators (CM–2017b). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the address section below on or before May 2, 2022.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Anjanette Suggs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–3323, Washington, DC 20210; by fax to (202) 354–9660; or by Email to *Suggs.Anjanette@dol.gov.* Please use only one method of transmission for comments (mail/delivery, fax or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95).

I. *Background:* The Department's regulations implementing the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, may require parties to exchange all medical information about the minter they develop in connection with a claim for benefits, including information parties do not intent to submit as evidence in the claim. See 20 CFR 725.413. The rule helps protect a miner's health, assist unrepresented parties, and promote accurate benefit determinations. The potential parties to a BLBA claim include the benefits claimant, the responsible coal mine operator and its insurance carrier, and the Director, Office of Workers' Compensation Programs (OWCP). Under this rule, a party of a party's agent who receives medical information about the minter must send a copy to all other parties within 30 days after receipt or, if a hearing before an administrative law judge has already been scheduled, at least 20 days before the hearing. The exchanged information is entered into the record of the claim only if a party submits it into evidence.

The Department's authority to engage in information collection is specified in BLBA sections 413(b), 422(2) and 426(a). see 30 U.S.C. 923(b), 932(a) and 936(a). This information collection is currently approved for use through July 31, 2022.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks approval for the extension of this currently-approved information collection. The collection is necessary to give miners full access to information about their health, assist unrepresented claimants, and reach accurate benefit determinations under the BLBA.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Application for Self-Insurance under the Black Lung Benefits Act.

OMB Number: 1240–0057.

Affected Public: Business entities or other for-profit institutions.

Total Respondents: 49.

Total Annual Responses: 294.

Average Time per Response: 20 minutes to 2 hours (.89 average burden hours).

Estimated Total Burden Hours: 262 hours.

Frequency: Annually and quarterly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $5,850.46.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of

Management and Budget approval of the information collection request; they will also become a matter of public record.

Anjanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2022–04365 Filed 3–1–22; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for Partnership for Research and Education in Materials (PREM)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 2, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (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).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Partnerships for Research and Education in Materials (PREM).

OMB Number: 3145–0232.

Expiration Date of Approval: September 30, 2022.

Type of Request: Intent to seek approval to renew an information collection.

Overview of this Information Collection: The Partnerships for Research and Education in Materials (PREM) aims to enhance diversity in materials research and education by stimulating the development of formal, long-term, collaborative research and education relationships between minority-serving colleges and universities and centers, institutes and facilities supported by the NSF Division of Materials Research (DMR). With this collaborative model PREMs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. PREMs 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, with an emphasis on enhancing diversity.

PREMs 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. PREMs capitalize on diversity through participation and collaboration in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

PREMs 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 the award PREMs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov.* These indicators are both quantitative and descriptive and may include, for example, the characteristics of personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; patents, licenses; publications; degrees granted to students involved in PREM activities; descriptions of significant advances and other outcomes of the PREM effort.

Each PREM's annual report will include the following categories of activities: (1) Research, (2) education (3) outreach, (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 PREM has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

PREMs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports but are retrospective.

Use of the Information: NSF will use the information to continue funding of PREMs, and to evaluate the progress of the program.

Estimate of Burden: 50 hours per PREM for 32 PREMs for a total of 1,600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the fifteen PREMs.

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 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer,National Science Foundation.

[FR Doc. 2022–04402 Filed 3–1–22; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94301; File No. SR–PEARL–2022–06]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)

February 23, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on February 15, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to amend Exchange Rule 2617(b), Routing to Away Trading Centers, to: (i) Adopt two new routing options called Route to Primary Auction (''PAC'') and Price Improvement (''PI''); and (ii) make related changes and clarifications to Exchange Rules 2614(a)(2)(B) and 2617(b)(2).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl,* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2617(b), Routing to Away Trading Centers, to adopt two new routing options called PAC and PI that would be available to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities''). Both of the proposed routing options are based on similar functionality offered at other equity exchanges.[3] The Exchange also proposes to make related changes and clarifications to Exchange Rules 2614(a)(2)(B) and 2617(b)(2).

The Exchange offers its Equity Members[4] optional routing functionality that allows them to use the Exchange to access liquidity on other trading centers. The functionality includes routing algorithms that determine the destination or pattern of routing. Exchange Rule 2617(b)(5) sets forth that there is a particular pattern of routing to other trading centers, known as the ''System routing table'', as well as setting forth the Exchange's available routing option. All routing is designed to be conducted in a manner consistent with Regulation NMS.

PAC Routing Option

In sum, the PAC routing option would enable an Equity Member to designate that their order be routed to the primary listing market to participate in the primary listing market's opening, re-opening or closing process. Proposed Exchange Rule 2617(b)(5)(B) would describe PAC as a routing option for Market Orders[5] and displayed Limit Orders[6] designated with a time-in-force of Regular Hours Only (''RHO'')[7] that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process[8] of a primary listing market (BZX, the New York Stock Exchange LLC (''NYSE''), Nasdaq, NYSE American LLC (''NYSE American''), or NYSE Arca, Inc. (''NYSE Arca'')) if received before the opening, re-opening, or closing process of such market.[9]

The following summarizes the operation of the PAC routing option based on the order type and time-in-force selected. A more detailed description of the operation of the proposed PAC routing option is provided below.

- Only Market Orders and displayed Limit Orders designated as RHO would be eligible for routing pursuant to the PAC routing option.[10]
- Market Orders and displayed Limit Orders designated as Immediate-or-Cancel (''IOC'')[11] would not be eligible for routing pursuant to the PAC routing option.
- Market Orders coupled with the PAC routing option designated as IOC would be cancelled.[12]

[3] The PAC routing option is based on Cboe BZX Exchange, Inc. (''BZX'') Rule 11.13(b)(3)(N) (describing the ROOC routing option), Cboe EDGX Exchange, Inc. (''EDGX'') Rule 11.11(g)(8) (describing the ROOC routing option), *and* The Nasdaq Stock Market LLC (''Nasdaq'') Rule 4758(a)(1)(A)(x) (describing the LIST routing option). The PI routing option is based on BZX Rule 11.13(b)(3)(G) (describing the Route To Improve (''RTI'') routing option) *and* EDGX Rule 11.11(g)(12) (describing the RTI routing option).

[4] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[5] *See* Exchange Rule 2614(a)(2).

[6] *See* Exchange Rule 2614(a)(1).

[7] Exchange Rule 2614(b)(2) defines ''Regular Hours Only'' or ''RHO'' as ''[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.''

[8] As described further below, the Exchange does not propose to route Market Orders to the primary listing market's closing process.

[9] The Exchange notes that proposed Exchange Rule 2617(b)(5)(B) differs from BZX Rule 11.13(b)(3)(N) and EDGX Rule 11.11(g)(8) in three primary ways. First, proposed Exchange Rule 2617(b)(5)(B) would specify that the PAC routing option is limited to Market Orders and displayed Limit Orders while both BZX and EDGX rules do not include that level of specificity. However, the Exchange believes this is consistent with BZX and EDGX functionality. Second, proposed Exchange Rule 2617(b)(5)(B) would specify that an order coupled with the PAC routing option would only route to the re-opening following a regulatory halt, while BZX and EDGX refer to halts generally. Third, both BZX and EDGX require that an order be received before the primary listing market's opening, re-opening, or closing time, but do not specify whether that order must be received prior to the primary listing market's order entry cut-off time or how and when orders are routed to the primary listing market to participate in their opening, re-opening, or closing process. Proposed Exchange Rule 2617(b)(5)(B) would provide additional specificity as to when an order coupled with the PAC routing option would be routed to participate in the primary listing market's opening, re-opening, or closing process. The Exchange will continue to route such orders to participate in the primary listing market's opening, re-opening, or closing process after their order entry cut-off time to increase the order's chances of participating in the opening, re-opening, or closing process while also accounting for the order entry cut-off time being changed/extended or where the primary listing market continues to accept orders after their established order entry cut-off time in accordance with their rules. *See infra* note 22. If the primary listing market rejects or cancels the order coupled with the PAC routing option for any reason, the Exchange will pass any rejection or cancellation along to the Equity Member that entered the order.

[10] The Exchange believes this is consistent with operation of the ROOC routing option on BZX and EDGX and the LIST routing option on Nasdaq because none of those exchanges' rules state that any returned unexecuted shares of an order routed to participate in a primary listing market's opening, closing, or re-opening process may be cancelled upon receipt. The Exchange believes this implies that BZX, EDGX, and Nasdaq only route ROOC or LIST orders, respectively, with a time-in-force of RHO or its equivalent, and not as IOC. *See* BZX Rule 11.13(b)(3)(N) and EDGX Rule 11.11(g)(8) (stating ''[i]f shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the BZX Book, executed, or routed to destinations on the System routing table''). *See also* Nasdaq Rule 4758(a)(1)(A)(x) (describing Nasdaq's LIST routing option and specifying that any returned shares are posted to the book, thereby implying that Nasdaq does not route LIST orders as IOC).

[11] *See* Exchange Rule 2614(b)(1).

[12] An order that is cancelled is first accepted by the System and then immediately cancelled back to

• Market Orders coupled with the PAC routing option designated as RHO would be eligible to be routed to participate in the primary listing market's opening and re-opening process.

• Market Orders coupled with the PAC routing option designated as RHO would not be eligible to be routed to participate in the primary listing market's closing process and would be cancelled.

• Limit Orders coupled with the PAC routing option designated as RHO would eligible to be routed to participate in the primary listing market's opening, re-opening, and closing process.

• Limit Orders coupled with the PAC routing option designated as IOC received before the security has opened on the primary listing market would be cancelled.

• Limit Orders coupled with the PAC routing option designated as IOC received during the time when the Exchange is routing orders to participate in the primary listing market's re-opening process would be rejected.

• Limit Orders coupled with the PAC routing option designated as IOC received during continuous trading or during the time when the Exchange is in the process of routing orders to participate in the primary listing market's closing process would be routed pursuant to the PI routing option, described below.

Time-in-Force Related Rule Changes

The Exchange proposes certain changes to its time-in-force rules related to its proposal to only route Market Orders and displayed Limit Orders pursuant to the PAC routing option when such orders are designated as RHO. The Exchange currently offers two time-in-force instructions, IOC and RHO.

Exchange Rule 2614(a)(2)(B) provides that ''[a] Market Order may only include a time-in-force of IOC.'' The Exchange proposes to amend Exchange Rule 2614(a)(2)(B) to provide that a Market Order may also include a time-in-force of RHO only when coupled with the PAC routing option. Exchange Rule 2614(a)(2)(B) would further be amended to specify that all other Market Orders that include a time-in-force of RHO will be rejected. The Exchange proposes to require that only incoming Market Orders and Limit Orders designated as RHO will be eligible to be routed pursuant to the PAC routing option.[13]

As described in detail below, a Market Order coupled with the proposed PAC routing option designated as RHO would be rejected if not received: (i) Before the security has opened on the primary listing market to be routed to participate in the primary listing market's opening process; and (ii) after the announcement of a regulatory halt, suspension, or pause to be routed to participate in the primary listing market's re-opening process. Otherwise, a Market Order coupled with the PAC routing option and designated as IOC would also be rejected. Amending Exchange Rule 2614(a)(2)(B) to provide that a Market Order coupled with the PAC routing option include a time-in-force of RHO is necessary to ensure such orders are accepted by the System prior to the opening. For example, the Exchange does not accept orders with a time-in-force of IOC prior to 9:30 a.m. Eastern Time.[14] Therefore, a Market Order that is entered prior to 9:30 a.m. Eastern Time would need to include a time-in-force of RHO to be accepted and eligible to be routed to the primary listing market's opening process.

The Exchange currently designates all routable orders as IOC when routing such order to an away market, regardless of the time-in-force included with the order upon entry. Exchange Rule 2617(b)(4) describes this functionality and currently provides that the System will designate Market Orders and marketable Limit Orders that are fully or partially routed to an away Trading Center as IOC.[15]

To ensure that orders coupled with the PAC routing option are eligible to participate in the primary listing market's opening, re-opening, or closing process, the Exchange proposes to route Market Orders and displayed Limit Orders designated as RHO upon entry with a time-in-force accepted or required by the primary listing market.[16] As such, the Exchange would convert an order's time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market. For example, an order in a Nasdaq listed security coupled with the PAC routing option that includes a time-in-force of RHO would be routed as IOC or ''On Close'' to participate in Nasdaq's closing process.[17] The Exchange would not alter the time-in-force of an order coupled with the PAC routing option designated as RHO where the primary listing market accepts orders designated as RHO to participate in its opening, re-opening, or closing process.

Routing to Primary Listing Market's Opening, Re-Opening, or Closing Process

Proposed Exchange Rule 2617(b)(5)(B)(1) would describe how an order coupled with the PAC routing option operates when being routed to participate in the primary listing market's opening, re-opening, or closing process.

Proposed Exchange Rule 2617(b)(5)(B)(1)(i) would describe when an order designated as RHO and coupled with the PAC routing option may be routed to participate in the primary listing market's opening and re-opening processes. Specifically, proposed Exchange Rule 2617(b)(5)(B)(1)(i) would provide that a displayed Limit Order or Market Order designated as RHO received before the security has opened on the primary listing market will be routed to participate in the primary listing market's opening process upon receipt.[18] Proposed Exchange Rule 2617(b)(5)(B)(1)(i) would further provide that a displayed Limit Order designated as RHO will be routed to participate in a primary listing market re-opening process upon the announcement of a regulatory halt, suspension, or pause. A displayed Limit Order or Market Order designated as RHO received after the announcement of a regulatory halt, suspension, or pause, but before the time of a primary listing market re-opening process would be routed to participate in a primary listing market re-opening process upon receipt. Lastly, proposed Exchange Rule 2617(b)(5)(B)(1)(i) would provide that a Market Order designated as RHO not

the Member. An order that is rejected is not accepted by the System and immediately returned to the Member.

[13] *See supra* note 9. Related changes with regard to Limit Orders are not needed because Exchange Rule 2614(a)(1)(B) already provides that ''[a] Limit Order may include a time-in-force of IOC or RHO.''

[14] *See* Exchange Rule 2600(a).

[15] As described herein, the Exchange proposes to amend Exchange Rule 2614(a)(2)(B) to provide that a Market Order may also include a time-in-force of RHO only when coupled with the PAC routing option. *See supra* note 13 and accompanying paragraph.

[16] *See* proposed Exchange Rule 26174(b)(5)(B).

[17] *See, e.g.,* Nasdaq Rules 4702(b)(9)(A) (providing that ''[a]n LOO Order entered after 9:29:30 a.m. ET that is designated as an IOC will be rejected''), *and* 4702(b)(11)(B) (stating that ''a Participant may designate the Time-in-Force for an MOC Order either by designating a Time-in-Force of ''On Close'' or by entering a Time-in-Force of IOC and flagging the Order to participate in the Nasdaq Closing Cross'').

[18] Like current functionality, an order coupled with the PAC routing option that is also designated as IOC would be rejected if entered before 9:30 a.m. Eastern Time because the Exchange does not accept orders with a time-in-force of IOC prior to 9:30 a.m. Eastern Time. *See* Exchange Rule 2600(a).

received during times set forth above will be cancelled.

Proposed Exchange Rule 2617(b)(5)(B)(1)(i)(a) would describe how the Exchange would handle the returned unexecuted quantity of a Limit Order designated as RHO routed pursuant to the PAC routing option to participate in the primary listing market's opening or re-opening process. Specifically, proposed Exchange Rule 2617(b)(5)(B)(1)(i)(a) would provide that any shares that remain unexecuted after attempting to execute in the primary listing market's opening or re-opening process will either be posted to the MIAX Pearl Equities Book, executed, or routed pursuant to the PI routing option described below.[19] Because Limit Orders must be designated as RHO upon entry to be routed pursuant to the PAC routing option, an Equity Member that wants any returned unexecuted quantity of such order to be immediately returned to them would need to submit an instruction to cancel any unexecuted shares upon their return to the Exchange.

Proposed Exchange Rule 2617(b)(5)(B)(1)(i)(b) would describe how the Exchange would handle the returned unexecuted quantity of any Market Order designated as RHO routed pursuant to the PAC routing option to participate in the primary listing market's opening or re-opening process. Today, the Exchange cancels the returned unexecuted quantity of routed Market Orders pursuant to Exchange Rule 2614(a)(2). The same would be true for a Market Order designated as RHO that is routed away pursuant to the PAC routing option. Proposed Exchange Rule 2617(b)(5)(B)(1)(i)(b) provides that any shares of a Market Order that remain unexecuted after attempting to execute in the primary listing market's opening or re-opening process will be cancelled.

Proposed Exchange Rule 2617(b)(5)(B)(1)(ii) would describe when an order coupled with the PAC routing option would be routed to participate in the primary listing market's closing process. The Exchange only proposes to route Limit Orders coupled with the PAC routing option and designated as RHO to participate in the primary listing market's closing process. Market Orders would not be eligible to be routed pursuant to the PAC routing option to participate in the primary listing market's closing process, as discussed more below. Proposed Exchange Rule 2617(b)(5)(B)(1)(ii)(a) would provide that Limit Orders designated as RHO will be routed pursuant to the PAC routing option to participate in the primary listing market's closing process prior to the primary listing market's order entry cut-off time.[20]

Proposed Exchange Rule 2617(b)(5)(B)(1)(ii)(a) does not provide a deadline for order entry because the Exchange will continue to route Limit Orders designated as RHO to participate in the primary listing market's opening, re-opening, or closing process after their order entry cut-off time. In addition, proposed Exchange Rule 2617(b)(5)(B)(1)(ii)(a) would provide that if a Limit Order designated as RHO is received at or after the time the Exchange begins to route orders to participate in the primary listing market's closing process, but before market close, the Exchange will check the System for available shares and then route the remaining shares to participate in the primary listing market's closing process.[21] This is intended to provide Equity Members with increased opportunities to participate in the primary listing market's closing process while also accounting for whether the order entry cut-off time is changed/extended or should the primary listing market continue to accept orders after their established order entry cut-off time in accordance with their rules.[22] If the primary listing market rejects or cancels the Limit Order routed pursuant to the PAC routing option for any reason, the Exchange will pass any rejection or cancellation along to the Equity Member that entered the order. Equity Members that seek greater certainty that their Limit Orders coupled with the PAC routing option would participate in the closing process at the primary listing market may enter their orders prior to the primary listing market's order entry cut-off time.

Market Orders coupled with the PAC routing option would not be eligible for routing to the primary listing market's closing process. Proposed Exchange Rule 2617(b)(5)(B)(1)(ii)(b) would, therefore, provide that a Market Order designated as RHO would not be eligible to be routed to participate in the primary listing market's closing process. Proposed Exchange Rule 2617(b)(5)(B)(1)(ii)(b) would further provide that a Market Order designated as RHO received at or after the time the Exchange begins to route existing orders to participate in the primary listing market's closing process, but before market close, will be cancelled.

The Exchange understands that Equity Members do not plan to utilize Market Orders to participate in the primary listing market's closing process because they would prefer to enter Limit Orders for purposes of participating in the price discovery process conducted by the primary listing market's closing process.[23] Therefore, the Exchange does not propose to accept Market Orders for purposes of routing them to a primary listing market's closing process. The Exchange seeks to make clear in its proposed rules how a Market Order coupled with the PAC routing option would be handled should an Equity Member mistakenly enter such an order when the Exchange is in the process of routing orders to participate in the primary listing market's closing process.

Continuous Trading

Proposed Exchange Rule 2617(b)(5)(B)(2) would describe how an order coupled with the PAC routing option would operate during continuous trading when the Exchange is not in the process of routing orders pursuant to the PAC routing option to participate in the primary listing market's re-opening or closing process.

[19] This is consistent with the ROOC routing option available on BZX and EDGX which provides that ''[i]f shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the BZX Book, executed, or routed to destinations on the System routing table.'' *See* BZX Rule 11.13(b)(3)(N) *and* EDGX Rule 11.11(g)(8).

[20] The Exchange will publicly announce the initial time at which it would route Limit Orders to participate in the primary listing market's closing process and any updates via a regulatory circular or alert. Unexecuted shares of a Limit Order that are routed to participate in the primary listing market's closing process will be cancelled.

[21] The Exchange notes that the portion of a Limit Order designated as RHO not executed in the primary listing market's closing process will be cancelled because the Exchange does not currently provide an afterhours trading session or time-in-force instruction that extends past Regular Trading Hours.

[22] *See, e.g.,* NYSE Rule 7.35B(f)(1)(B) (providing for the entry of orders after the order entry cut-of time in the event a Regulatory Closing Imbalance is published). *See, e.g.,* BZX Rules 11.23(b)(1)(A) (providing for the entry of Late Limit On Open Orders until 9:30 a.m.), (c)(1)(A) (providing for the entry of Late Limit On Close orders up until 4:00 p.m.); *and* (d)(1)(C) (Incremental Quote Period Extensions For Halt Auctions Following a Regulatory Halt). The Exchange notes that this differs from BZX Rule 11.13(b)(3)(N) *and* EDGX Rule 11.11(g)(8). *See supra* note 9. This behavior is also similar to Nasdaq's LIST routing option that will continue to route orders to participate in the primary listing market's closing process after its order entry cut-off time. *See* Nasdaq Rule 4758(a)(1)(A)(x) (stating that ''[i]f a LIST order is received at or after a time that is two minutes before market close but before market close, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table; remaining shares will be routed to the security's primary listing market to participate in its closing process.'').

[23] The Exchange would submit a proposed rule change to route Market Orders to participate in the primary listing market's closing process should Equity Members request such a change.

Specifically, proposed Exchange Rule 2617(b)(5)(B)(2)(i) would describe the handling of Limit Orders coupled with the PAC routing option designated as RHO during continuous trading and provide that if the order is entered after the security has opened on the primary listing market, before being routed to the primary listing market's re-opening or closing process pursuant to proposed Exchange Rule 2617(b)(5)(B)(1)(i) described above, the Exchange will check the System [24] for available shares and then route the remaining shares pursuant to the PI routing option,[25] described below.[26] As a result, a Limit Order coupled with the PAC routing option that is designated as RHO would be treated how a re-routable Limit Order is treated today during continuous trading; *i.e.,* it would be eligible: (i) First for execution locally on the MIAX Pearl Equities Book; and then (ii) any remaining share would be routed away to better priced away interest pursuant to the proposed PI routing option described below.

Proposed Exchange Rule 2617(b)(5)(B)(2)(i)(a) would describe how any unexecuted portion of a Limit Order designated as RHO and coupled with the PAC routing option that is routed pursuant to the PI routing option during continuous trading would be handled. Specifically, proposed Exchange Rule 2617(b)(5)(B)(2)(i)(a) would provide that any shares that remain unexecuted after routing will be either posted to the MIAX Pearl Equities Book, executed, or routed pursuant to the PI routing option, described below.[27]

Proposed Exchange Rule 2617(b)(5)(B)(2)(ii) would describe the handling of Limit Orders coupled with the PAC routing option designated as IOC during continuous trading. As set forth above, a Limit Order coupled with the PAC routing option that is designated as IOC would not be eligible to be routed pursuant to the PAC routing option. However, such order would be eligible to be routed pursuant to the proposed PI routing option. This functionality would be described under proposed Exchange Rule 2617(b)(5)(B)(2)(ii), which would provide that if a Limit Order designated as IOC is entered after the security has opened on the primary listing market, the Exchange will check the System for available shares and then route the remaining shares pursuant to the PI routing option described below. Any shares that remain unexecuted after routing will be cancelled in accordance with the terms of the order.

Proposed Exchange Rule 2617(b)(5)(B)(2)(ii)(a) would provide that a Limit Order coupled with the PAC routing option designated as IOC received during the time when the Exchange is in the process of routing orders to the primary listing market's re-opening process will be rejected. Such order would not be routed pursuant to the PI routing option because trading in the security would be halted pending the primary listing market conducting its re-opening process.

Proposed Exchange Rule 2617(b)(5)(B)(2)(iii) would describe the handling of Market Orders designated as RHO that are coupled with the PAC routing option during continuous trading. Specifically, proposed Exchange Rule 2617(b)(5)(B)(2)(iii) would provide that a Market Order designated as RHO that is entered after the security has opened on the primary listing market would be routed to participate in the primary listing market's re-opening process pursuant to the PAC routing option in accordance with proposed Exchange Rule 2617(b)(5)(B)(1), which is described above. In sum, a Market Order designated as RHO received after the announcement of a regulatory halt, suspension, or pause, but before the time of a primary listing market re-opening process would be routed to participate in a primary listing market re-opening process upon receipt. A Market Order designated as RHO not received during times set forth above would be cancelled.

Lastly, proposed Exchange Rule 2617(b)(5)(B)(2)(iv) would provide that a Market Order coupled with the PAC routing option that is designated as IOC entered after the security has opened on the primary listing market will be cancelled. As discussed above, the Exchange will only route Market Orders pursuant to the PAC routing option when designated as RHO. As such, a Market Order would not be eligible to be routed pursuant to the PAC routing option when designated as IOC. Nor does the Exchange propose that Market Orders be eligible for routing pursuant to the proposed PI routing option, discussed below. The proposed rule text is intended to provide completeness within the Exchange's rules regarding how Market Orders coupled with the PAC routing option would be handled when designated as IOC.

Routing During Short Sale Period

The Exchange also proposes to make a related change to Exchange Rule 2617(b)(2) to describe the routing of orders coupled with the PAC routing option during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A).[28] Exchange Rule 2617(b)(2) currently provides that an order marked ''short'' is not eligible for routing by the Exchange during a Short Sale Period. The Exchange proposes to amend Exchange Rule 2617(b)(2) to provide for the routing of an order marked ''short'' where that order is being routed to participate in the primary listing market's opening, re-opening, or closing process pursuant to the PAC routing option.[29] Specifically, as amended, Exchange Rule 2617(b)(2) would provide that ''[u]nless an order is routed pursuant to the PAC routing option set forth under paragraph (b)(5) of this Rule, an order marked 'short' is not eligible for routing by the Exchange during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A).'' [30] The Exchange notes that an order coupled with the PAC routing option that is also marked ''short'' would remain ineligible for routing during a Short Sale Period where that order would be routed

[24] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[25] A Limit Order coupled with the PAC routing option would only be defaulted to the proposed PI routing option and will not be eligible to be coupled with any other routing option.

[26] Proposed Exchange Rule 2617(b)(5)(B)(2) is based on Nasdaq Rule 4758(a)(1)(A)(x), which describes how their LIST routing option operates during continuous trading. *See* Nasdaq Rule 4758(a)(1)(A)(x) (providing that ''if a LIST order is entered after the security has opened on the primary listing market (but before a time that is two minutes before market close) and the order has not been designated to participate in the opening only, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table . . .'').

[27] Proposed Exchange Rule 2617(b)(5)(B)(2)(i) is based on BZX Rule 11.13(b)(3)(N) and EDGX Rule 11.11(g)(8).

[28] Exchange Rule 2614(g)(3)(A) generally defines a Short Sale Period as the time during which a short sale price test restriction under Rule 201 of Regulation SHO is in effect.

[29] Rules 201(b)(1)(i) and (ii) of Regulation SHO generally require that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) Prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price; and (ii) impose this price restriction for the remainder of the day and the following day. To maintain compliance with Rule 201 of Regulation SHO, an exchange may only execute short sale orders (*i.e.,* those not marked short exempt) if the execution would take place at a permissible price pursuant to Regulation SHO. Specifically, if a security is in a Short Sale Period, an order marked short that is routed pursuant to the proposed PAC routing option may only trade in the opening, re-opening, or closing process if the process price is above the national best bid.

[30] The Exchange notes that proposed amended Exchange Rule 2617(b)(2) is based on BZX Rule 11.13(b)(1) and EDGX Rule 11.11(a) with regard to their ROOC routing option.

pursuant to the PI routing option, described below.

The Exchange further notes that Equity Members must continue to ensure that their orders are marked in accordance with the requirements of Regulation SHO and Exchange Rule 2623 [31] and that it is the primary listing market's obligation to ensure that an order marked short that is routed by the Exchange to participate in its opening, re-opening, or closing process is executed in accordance with the price restrictions of Regulation SHO.[32]

PI Routing Option

Proposed Exchange Rule 2617(b)(5)(C) would describe the PI routing option as a routing option that will route a Limit Order coupled with the PAC routing option to multiple destinations simultaneously at a single price level.[33] Limit Orders routed pursuant to the PI routing option would be designated as IOC in accordance with current Exchange Rule 2617(b)(4)(B). Like the proposed PAC routing option, the PI routing option is based on the rules of other equity exchanges.[34] Proposed Exchange Rule 2617(b)(5)(C) would further provide that PI would not be an independent routing option and may not be selected individually upon order entry. As discussed more fully below, the proposed PI routing option would only be available to displayed Limit Orders coupled with the PAC routing option. Such orders would be eligible to be routed pursuant to the proposed PI routing option when: (i) Designated as RHO and entered during continuous trading and when the Exchange is not in the process of routing orders pursuant to the PAC routing option; or (ii) designated as IOC and entered during continuous trading.[35]

Proposed Exchange Rule 2617(b)(5)(C)(i) would provide that a displayed Limit Order designated as RHO and coupled with the PAC routing option would automatically be coupled by the System with the PI routing option.[36] In other words, an Equity Member that elects the PAC routing option also elects that its displayed Limit Order designated as RHO be subject to the PI routing option during continuous trading when not being routed to participate in the primary listing market's re-opening or closing process.

The following example illustrates the operation of the PI routing option. Assume the Exchange receives a displayed Limit Order designated as RHO to buy 300 shares at $10.00 during continuous trading and the Equity Member selected the PAC routing option (''Order 1'') and there are no orders resting on the MIAX Pearl Equities Book. Exchange A's best displayed offer is $9.99 for 100 shares, Exchange B's best displayed offer is also $9.99 for 100 shares, and Exchange C's best displayed offer is $10.00 for 100 shares. During continuous trading, Order 1 is subject to the PI routing option and would be routed as follows: 100 shares are routed to Exchange A and 100 shares are routed to Exchange B at $9.99. Assume that Order 1 executes against Exchange A and B's best displayed offers at $9.99 exhausting that price level. Exchanges A and B update their best displayed offers to $10.01 for 100 shares and $10.02 for 100 shares, respectively. Exchange C is now the best displayed offer at $10.00 for 100 shares. The remaining 100 shares of Order 1 would then be routed to Exchange C to execute 100 shares at $10.00.

The proposed PI routing option would also be available to Limit Orders designated as IOC. However, because the PI routing option is not a standalone routing option, Equity Members would be required to couple such orders with the PAC routing option and enter them during continuous trading. This functionality would be described under proposed Exchange Rule 2617(b)(5)(C)(ii), which would provide that a Limit Order designated as IOC that is coupled with the PAC routing option received during continuous trading will automatically be defaulted by the System to the PI routing option. As stated above, only displayed Limit Orders designated as RHO would be eligible to be routed pursuant to the proposed PAC routing option. Proposed Exchange Rule 2617(b)(5)(C)(ii) would, therefore, reiterate that Limit Orders designated as IOC are not eligible to be routed pursuant the PAC routing option. As a result, Limit Orders designated as IOC that are eligible to be routed pursuant to the PI routing option will be routed as such even during the time when the Exchange is in the process of routing orders pursuant to the PAC routing option to participate in the primary listing market's closing process.

Equity Members that seek to utilize the PAC routing option, but not the PI routing option, may submit a displayed Limit Order designated as RHO coupled with the PAC routing option before the security opens on the primary listing market or during the time at which the Exchange is routing orders to participate in the primary listing market's re-opening or closing processes and, in the case of an opening and re-opening process, subsequently submit an instruction to cancel any unexecuted shares upon their return to the Exchange.[37] Conversely, Equity Members that seek to utilize the PI routing option, but not the PAC routing option may (i) enter a Limit Order coupled with both the PAC routing option and time-in-force of IOC during continuous trading; or (ii) enter a Limit Order coupled with both the PAC routing option and time-in-force of RHO during continuous trading and cancel such order prior to the time when the Exchange begins to route such orders to participate in the primary listing market's re-opening or closing process.[38]

[31] Exchange Rule 2623 provides that ''[a]ll short sale orders shall be identified as 'short' or 'short exempt' when entered into the System. If marked 'short exempt,' the Exchange shall execute, display and/or route a short sale order marked without regard to any short sale price test restriction in effect during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A). The Exchange relies on the marking of an order as 'short exempt,' when handling such order, and thus, it is the entering Equity Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as 'short exempt,' ' Exchange Rule 2603 also requires that Equity Members input accurate information into the System.

[32] Any remaining unexecuted shares returned to the Exchange after routing will be handled and executed by the Exchange in accordance with the price restrictions of Regulation SHO.

[33] This differs from the Exchange's existing Order Protection routing option, which routes orders to multiple destinations at multiple price levels simultaneously. *See* Exchange Rule 2617(b)(5)(A).

[34] The PI routing option is based on the Route to Improve (''RTI'') routing option available on EDGX which provides that ''RTI may route to multiple destinations at a single price level simultaneously . . .''. *See* EDGX Rule 11.11(g)(12). *See also* BZX Rule 11.13(b)(3)(G).

[35] The proposed PI routing option would not be available to a Market Order coupled with the PAC routing option that is designated as RHO because such order is not accepted during continuous trading, as described above.

[36] This is consistent with the ROOC and RTI routing option available on EDGX which provides that ''[a] User may select either Route To Improve ('RTI') . . . for the following routing options: ROOC . . . .'' *See id.* The only difference between the Exchange's proposal and EDGX Rule 11.11(g)(12) is that on EDGX the coupling of the ROOC and RTI routing options is elective while the Exchange proposes to always include the PI routing option when the PAC routing is elected.

[37] *See supra* note 21. The unexecuted returned quantity of an order routed to participate in the primary listing exchange's closing process will be cancelled since the Exchange does not currently provide an after-hours trading session.

[38] The Exchange believes this is consistent with functionality on BZX and EDGX, which may allow for an order coupled with their RTI routing option to include a time-in-force of IOC. The Exchange believes this would allow such an order on BZX and EDGX to be routed pursuant to the RTI routing option during continuous trading with any returned shares being cancelled, thereby bypassing their ROOC routing option. *See* EDGX Rule 11.11(g)(12) *and* BZX Rule 11.13(b)(3)(G) (not limiting the time-in-force instructions available to be coupled with the RTI routing option).

Clarification to Exchange Rule 2617(b)(2)

The Exchange also proposes a minor clarification to Exchange Rule 2617(b)(2). The second sentence of Exchange Rule 2617(b)(2) currently provides that, ''[a]n order that is ineligible for routing during a Short Sale Period that includes a time-in-force of IOC will be cancelled upon entry.'' In all cases, a non-routable order designated as IOC will first execute against contra-side interest on the MIAX Pearl Equities Book and then be cancelled because it is not eligible for routing and will never be posted to the MIAX Pearl Equities Book. The Exchange proposes to amend the second sentence of Exchange Rule 2617(b)(2) to clarify that an order that is ineligible for routing during a Short Sale Period that includes a time-in-force of IOC will first execute against contra-side interest on the MIAX Pearl Equities Book and then be cancelled. This change to Exchange Rule 2617(b)(2) is designed to better align the rule with System functionality by specifying that the order is first eligible for execution against contra-side interest before being cancelled.

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change to provide Equity Members with adequate time to prepare for the associated technological changes. The Exchange anticipates that the implementation date will be in either the first or second quarter of 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[39] in general, and furthers the objectives of Section 6(b)(5),[40] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would remove impediments to a free and open market and promote just and equitable principles of trade because it would provide market participants, including institutional firms who ultimately represent individual retail investors in many cases, with optional functionality that would provide them with better control over their orders.

The proposed PAC routing option would promote just and equitable principles of trade, facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide market participants with additional optional access to the primary listing market's opening, re-opening, and closing process. As a result, Equity Members will have access to additional sources of liquidity, potentially benefiting from improved execution prices and a more efficient marketplace. Therefore, the Exchange believes the proposed rule change will provide Equity Members with greater control and flexibility over their routing of orders, thereby facilitating transactions in securities and perfecting the mechanism of the national market system. The Exchange also notes that use of its proposed routing options is completely voluntary and no Equity Member is required to route orders through the Exchange and may choose other methods to access liquidity on other trading centers.

The proposed PAC routing option would not impede the national market system because it is not designed to disrupt the ability of the primary listing market to conduct their opening, re-opening, and closing processes. The proposed rule change is similar to existing routing options already provided by other equity exchanges,[41] which the Exchange understands have not disrupted the primary listing market's ability to conduct their opening, re-opening, or closing processes. The proposed rule change would simply provide Equity Members with another means to participate in the primary listing market's opening, re-opening, and closing processes. The primary listing markets are free to reject or cancel such orders should they deem them to be inconsistent with their applicable rules.

The Exchange further believes its proposal promotes just and equitable principles of trade because the proposed operation of the proposed routing options are well established in the equity markets and are based on similar functionality at other equity exchanges.[42] This includes the Exchange's proposal to only route Market Orders and displayed Limit Orders designated as RHO pursuant to the PAC routing option because the Exchange believes this is consistent with operation of the ROOC routing option on BZX and EDGX, and the LIST routing option on Nasdaq.[43]

While the proposed rule change does differ from similar functionality at other exchanges, the Exchange does not believe any of these differences are material. For example, the Exchange notes that the proposed PAC routing option under Exchange Rule 2617(b)(5)(B) would differ from BZX Rule 11.13(b)(3)(N) and EDGX Rule 11.11(g)(8) in three primary ways. First, proposed Exchange Rule 2617(b)(5)(B) would specify that the PAC routing option is limited to Market Orders and displayed Limit Orders designated as RHO while both BZX and EDGX rules do not include that level of specificity. However, the Exchange believes this is consistent with BZX and EDGX functionality based on industry feedback. The Exchange believes not allowing the PAC routing option to be coupled with non-displayed Limit Orders is reasonable and consistent with the use of the routing option. The Exchange understands that potential users of the PAC routing option seek to improve the likelihood of execution of their orders and better accomplish this goal if their Limit Orders are displayed on the MIAX Pearl Equities Book.

Second, proposed Exchange Rule 2617(b)(5)(B) would specify that the PAC routing option would only route orders to the re-opening following a regulatory halt, while BZX and EDGX refer to halts generally. The Exchange believes this is not a material difference as most halts are regulatory halts and specifying regulatory halts within the rule provides additional specificity. The Exchange does not propose to route orders with a PAC routing option for other types of halts, such as an operational halt, because an operational halt indicates that the primary listing market that issued the halt has indicated that they may be experiencing a system issue across all or a subset of securities that inhibits their ability to operate normally. Additionally, some exchanges cancel all open orders as a result of an operational halt and do not accept new orders while the operational halt is in effect and/or do not conduct a re-opening process once the operational halt concludes.[44]

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See supra* notes 3 and 9.

[42] *Id.*

[43] *See supra* note 9.

[44] *See, e.g.,* BZX Rule 11.23(d) (providing that BZX will conduct a halt auction after a regulatory halt and not specifying an operational halt).

Third, both BZX and EDGX require that an order be received before the primary listing market's opening, re-opening, or closing time, but do not specify whether that order must be received prior to the primary listing market's order entry cut-off time or how and when orders are routed to the primary listing market to participate in their opening, re-opening, or closing process. Proposed Exchange Rule 2617(b)(5)(B) would provide additional specificity as to when an order would be routed to participate in the primary listing market's opening, re-opening, or closing process. The Exchange will continue to route orders to participate in the primary listing market's opening, re-opening, or (in the case of a displayed Limit Order) closing process after their order entry cut-off time to increase the order's chances of participating in the opening, re-opening, or closing process while also accounting for the order entry cut-off time being changed/extended or where the primary listing market continues to accept orders after their established order entry cut-off time in accordance with their rules.[45] If the primary listing market rejects or cancels the order coupled with the PAC routing option for any reason, the Exchange will pass any rejection or cancellation along to the Equity Member that entered the order via existing protocols. This behavior is also similar to Nasdaq's LIST routing option that will continue to route orders to participate in the primary listing market's closing process after its order entry cut-off time.[46] Equity Members that seek greater certainty that their orders coupled with the PAC routing option would participate in the opening, re-opening, or closing process at the primary listing market may enter their orders prior to the primary listing market's order entry cut-off time.

The Exchange also believes that not: (i) Accepting Market Orders coupled with the PAC routing option during continuous trading; (ii) making Market Orders eligible for routing pursuant to the proposed PI routing option; and (iii) routing Market Orders coupled with the PAC routing option to the primary listing market's closing process promotes just and equitable principles of trade because the proposed treatment is consistent with the Exchange's understanding of how Equity Members would expect such orders to be handled. The treatment of Market Orders coupled with the PAC routing option is being proposed in response to industry feedback that Equity Members do not intend to enter Market Orders with the PAC routing option during continuous trading or for such orders to be routed to participate in a primary listing market's closing process. The Exchange understands that Equity Members would prefer to have such orders cancelled in the event they inadvertently entered such order. This proposed functionality promotes just and equitable principles of trade, and in general, protects investors and the public interest because it provides specificity within the Exchange's rules and aligns system functionality with how the Exchange understands Members would expect their Market Orders would be handled in such circumstances.

Further, the Exchange proposes to require that Limit Orders coupled with the PAC routing option are also automatically coupled with the PI routing option. In other words, the PI routing option could not be elected individually and without also electing the PAC routing option. This is different than EDGX, which allows their ROOC routing option to be coupled with their RTI routing option but does not require it. The Exchange does not believe this is a material difference and does not propose to offer the optionality to couple the PAC and PI routing options at this time based on input from market participants. As stated above, the Exchange understands that potential users of the PAC routing option seek to improve the likelihood of execution of their Limit Orders and better accomplish this goal if their orders are eligible for routing pursuant to the PI routing option during continuous trading and when the Exchange is not in the process of routing orders away pursuant to the PAC routing option. Requiring that the PAC routing option be coupled with the PI routing option would provide Equity Members with increased price improvement opportunities during continuous trading because their Limit Order would be eligible for routing to multiple markets at the single best price level simultaneously. Equity Members that seek to utilize the PAC routing option, but not the PI routing option, may submit a Limit Order designated as RHO and coupled with the PAC routing option before the security has opened on the primary listing market or during the time at which the Exchange is routing orders pursuant to the PAC routing option to participate in the primary listing market's re-opening or closing process and, in the case of an opening and re-opening process, subsequently to cancel any unexecuted shares upon their return to the Exchange.[47] Conversely, Equity Members that seek to utilize the PI routing option, but not the PAC routing option may (i) enter a Limit Order coupled with both the PAC routing option and time-in-force of IOC during continuous trading; or (ii) enter a Limit Order coupled with both the PAC routing option and time-in-force of RHO during continuous trading and cancel such order prior to the time when the Exchange begins to route such orders to participate in the primary listing market's re-opening or closing process.[48] The Exchange believes providing a path for Members to utilize the PI routing option, but not the PAC routing option, removes impediments to a free and open market because it is consistent with similar functionality available on other equity exchanges[49] and Members appreciate this consistency because it enables them to modify their systems in a singular manner that accommodates similar functionality across multiple exchanges.

By routing to a single price level at a time, the PI routing option places more emphasis on maximizing price improvement for the order as opposed to speed of execution. Therefore, the proposed PI routing option promotes just and equitable principles of trade because it provides Equity Members with additional flexibility when deciding how their orders are to be routed by providing them the ability to seek out better prices over the speed of execution. The proposed PI routing option is also based on functionality offered by other equity exchanges.[50]

The Exchange also believes its proposed related change to Exchange Rule 2617(b)(2) to allow for the routing of orders coupled with the PAC routing option during a Short Sale Period promotes just and equitable principles of trade because it would provide such orders with increased possibilities to participate in the primary listing

[45] *See supra* note 22.

[46] *See* Nasdaq Rule 4758(a)(1)(A)(x) (providing that ''[t]wo minutes before market close, all LIST orders on the book will begin routing to the security's primary listing market for participation in its closing process. If a LIST order is received at or after a time that is two minutes before market close but before market close, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table; remaining shares will be routed to the security's primary listing market to participate in its closing process.'').

[47] *See supra* note 21. The unexecuted returned quantity of an order routed to participate in the primary listing exchange's closing process will be cancelled since the Exchange does not currently provide an after-hours trading session.

[48] *See supra* note 38.

[49] *See supra* note 38.

[50] *See* EDGX Rule 11.11(g)(12). *See also* BZX Rule 11.13(b)(3)(G).

market's opening, re-opening, or closing process in the event of a prolonged Short Sale Period. Further, this proposed change to Exchange Rule 2617(b)(2) is not unique and is consistent with functionality offered by other equity exchanges.[51] Finally, the proposed clarification to Exchange Rule 2617(b)(2) promotes just and equitable principles of trade and protects investors and the public interest because it better aligns the rule with System functionality by specifying that the order is first eligible for execution against contra-side interest before being cancelled.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed PAC routing option and related changes may have a positive effect on competition because it will enable the Exchange to offer functionality substantially similar to that offered by BZX, EDGX, and Nasdaq.[52] The same is true for the proposed PI routing option which is also similar to functionality offered by EDGX and BZX.[53] The Exchange believes its lack of this functionality has put it at a competitive disadvantage as market participants that seek to have their orders eligible to be routed for improved price improvement opportunities or to the primary listing markets' opening, re-opening, or closing process have avoided sending orders to the Exchange in favor of other exchanges that offer such functionality. This proposal is designed to allow the Exchange to directly compete with other exchanges that offer similar routing functionality. The Exchange believes that its proposal promotes competition because it is designed to attract liquidity to the Exchange by providing market participants with additional routing functionality.

The Exchange believes that the proposal will not impose any burden on inter-market competition, but rather promote competition by enhancing the value of the Exchange's available routing options. However, since the use of the Exchange's routing options is voluntary and Equity Members have numerous alternative mechanisms for order routing, the changes will not impair the ability of Equity Members to use other means to access competing trading venues. The proposed rule change would improve inter-market competition because it allows the Exchange to provide another means by which market participants would be able to participate in the primary listing market's opening, re-opening, or closing processes that is similar to that currently provided by other exchanges.[54]

The Exchange believes that the proposal will not impose any burden on intra-market competition because it would be available to all Equity Members. Any Equity Member that seeks to have their order routed to multiple markets at a single price level simultaneously or to participate in the primary listing market's opening, re-opening, or closing processes is free to select the PAC routing option or seek to access those markets through other means.

In addition, the Exchange also believes its proposed related change to Exchange Rule 2617(b)(2) to allow for the routing of orders coupled with the PAC routing option during a Short Sale Period will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is identical to functionality offered on BZX, EDGX, and Nasdaq, and, therefore, does not alone enhance the Exchange's competitive position.

Finally, the proposed clarification to Exchange Rule 2617(b)(2) will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it also does not enhance the Exchange's competitive position. Rather, it is simply designed to better align the rule with System functionality by specifying that the order is first eligible for execution against contra-side interest before being cancelled.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[55] and Rule 19b–4(f)(6)[56] 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–PEARL–2022–06 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–2022–06. 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

[51] *See* BZX Rule 11.13(b)(1) and EDGX Rule 11.11(a) (regarding their ROOC routing option).

[52] *See supra* notes 3 and 9.

[53] *See* EDGX Rule 11.11(g)(12). *See also* BZX Rule 11.13(b)(3)(G).

[54] *Id.*

[55] 15 U.S.C. 78s(b)(3)(A).

[56] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2022–06, and should be submitted on or before March 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2022–04211 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94310; File No. SR–CTA/CQ–2021–02]

Consolidated Tape Association; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Eighth Substantive Amendment to the Restated CQ Plan

February 24, 2022.

I. Introduction

On November 5, 2021,[1] the Participants[2] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'')[3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (the ''Proposed Amendments'') to amend the Plans to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[6] The Proposed Amendments were published for comment in the **Federal Register** on November 29, 2021.[7]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Summary of the Proposed Amendments[9]

The Participants propose to amend the Plans to comply with Rule 614(e) of the MDI Rules. Rule 614(e) requires participants to the effective national market system plan(s) for NMS stocks to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1)—(5).[10]

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.

Rule 614(e)(2) requires the amendment to include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators.

Rule 614(e)(3) requires the amendment to include assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission.

Rule 614(e)(4) requires the amendment to include the development, maintenance and publication of a list that identifies the primary listing exchange for each NMS stock.

Rule 614(e)(5) requires the amendment to include the calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by (i) listed on the NYSE; (ii) listed on Nasdaq; and (iii) listed on exchanges other than NYSE or Nasdaq.

The following is a summary of the changes proposed to be made to the Plans by the Proposed Amendments.

CTA Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CTA Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

Section I.—Definitions

The Proposed Amendments add a definition of ''Primary Listing Exchange,'' as new Section I.(x), which means ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on

[1] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[3] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995.

[4] 15 U.S.C 78k–1(a)(3).

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release'').

[7] *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm.*

[8] 17 CFR 242.608(b)(2)(i).

[9] The full text of the Proposed Amendments appear as Attachments A and B to the Notice. *See* Notice, *supra* note 7, 86 FR at 67802–29.

[10] 17 CFR 242.614(e). The Participants have submitted separate amendments to implement the fee-related aspects of the MDI Rules. *See* Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR–CTA/CQ–2021–03).

more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.''

Section IV.—Administration of the CTA Plan

The Proposed Amendments add new Section IV.(e), Plan website Disclosures, requiring CTA to publish on the CTA Plan's website the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[11]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators'' and add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these additions are intended to comply with the requirements of Rule 614(e)(3).[12]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[13] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[14] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

(ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section V. to define the monthly performance metrics in accordance with Rule 614(d)(5).[15]

Section VI.—Consolidated Tape

The Proposed Amendments amend Section VI.(c), Reporting Format and Technical Specifications, to include a reference to competing consolidators and self-aggregators such that last sale price information relating to a completed transaction in an Eligible Security reported to competing consolidators and self-aggregators by any Participant or other reporting party shall be in the format required in Section VI.(c).

In addition, the Proposed Amendments amend Section VI.(c) to delete from the required format the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp, and replace it with the time the last sale price information was generated by the Participant (reported in microseconds). Furthermore, the Proposed Amendments amend Section VI.(c) to add to the required format, with respect to reports to competing consolidators and self-aggregators, the time the Participant made the last sale price information available to competing consolidators and self-aggregators (reported in microseconds). The Participants explain that the proposed references to competing consolidators and self-aggregators and the proposed requirement to report in microseconds the time that a Participant made the last sale price information available to competing consolidators and self-aggregators are intended to comply with Rule 614(e)(1) and (2).[16]

With respect to FINRA, the Proposed Amendments amend a statement in Section VI.(c) that the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments change this statement to state that the time the last sale price information was generated by a Participant shall be the time that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments also add references to competing consolidators and self-aggregators such that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the transmission as published on the facility's proprietary feed.

The Proposed Amendments also delete Section VI.(g), ITS Transactions, which concerns last sale prices reflecting ITS transactions. The Participants explain that they are proposing to remove this provision because the ITS is obsolete.[17]

Section VIII. Collection and Reporting of Last Sale Data

The Proposed Amendments amend Section VIII.(a), Responsibility of Exchange Participants, to remove a list of exchange participants and the requirement that each collects and reports to the Processor all last sale price information to be reported to it relating to transactions in Eligible Securities taking place on its floor. The Proposed Amendments amend this statement to state that each Participant agrees to collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities.

The Proposed Amendments also add a statement that each Participant further agrees to collect and report to competing consolidators and self-aggregators all last sale price information to be reported to it related to transactions in Eligible Securities in the same manner and using

[11] *See* Notice, *supra* note 7, 86 FR at 67800.

[12] *See id.*

[13] 17 CFR 242.614(d)(5).

[14] *Id.*

[15] *See* Notice, *supra* note 7, 86 FR at 67800.

[16] *See id.*

[17] *See id.*

the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person.[18] In addition, the Proposed Amendments amend Section VIII.(b), FINRA Responsibility, to add references to competing consolidators and self-aggregators such that the provision states: ''The FINRA shall develop and adopt rules governing the reporting of last sale price information to be reported by its members to both the Processor for inclusion on the consolidated tape and to Competing Consolidators and Self-Aggregators. Such rules shall . . . (ii) be designed to avoid duplicate reporting of transactions on the consolidated tape or to Competing Consolidators and Self Aggregator . . .'' The Participants explain that these additions are designed to comply with Rule 614(e)(1).[19]

Finally, the Proposed Amendments delete Section VIII.(c), Description of Reporting Procedures, which states that each Participant and each other reporting party has prepared and submitted to CTA and the Commission a description of the procedures by which it collects and reports to the Processor last sale price information reported by it pursuant to the CTA Plan. The Participants explain that this provision is no longer relevant under the MDI Rules.[20]

Section IX.—Receipt and Use of CTA Information

In Sections IX.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c), Subscriber Terminations, the Proposed Amendments replace several references to ''each CTA network's information,'' ''a CTA network's information,'' ''that CTA network's information,'' and ''that CTA network's last sale price information'' with the term ''consolidated market data''.

The Proposed Amendments also amend Section IX.(a) to include references to competing consolidators and self-aggregators. Proposed Section IX.(a) states that, ''[p]ursuant to fair and reasonable terms and conditions, each CTA network's administrator shall provide for: (i) The dissemination of consolidated market data on terms that are not unreasonably discriminatory to Competing Consolidators, Self-Aggregators, vendors, newspapers, Participants, Participant members and member organizations, and other persons over that network's ticker and over the high speed line; and (ii) the use of consolidated market data by Competing Consolidators, Self-Aggregators, vendors, subscribers, newspapers, Participants, Participant members and member organizations and other persons.'' Additionally, the section now states that each CTA network's Participants will determine the terms and conditions applying in respect of a particular manner of receipt or use of consolidated market data including whether the manner of receipt or use will require recipients or users to enter into agreements with the CTA network's administrator, and that these determinations will be made in a reasonably uniform manner to subject all parties that receive or use consolidated market data in a particular manner to terms and conditions that are substantially similar.

In addition, the Proposed Amendments amend Section IX.(a) to state that the Participants expect their CTA network's administrator to require the following parties to enter into agreements with the CTA network administrator: (i) Any party that receives a CTA network's information by means of a direct computer-to-computer interface with the Processor or competing consolidator; (ii) any competing consolidator or self-aggregator that receives last sale transaction information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that redisseminate consolidated market data to others; and (iv) persons that use consolidated market data for such purposes as that CTA network's administrator may from time to time identify.

The Participants explain that the proposed revisions to Section IX.(a) intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[21] They believe that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[22]

The Proposed Amendments amend Section XI.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors and other parties that redisseminate consolidated market data (''data redisseminators'') shall be required to be approved by a CTA network's administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a CTA network's administrator may determine that circumstances warrant directing a data redisseminator to cease providing consolidated market data to a subscriber, and that the CTA network's Participants may direct the data redisseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network's administrator pursuant to Section IX.

Section XI.—Operational Matters

The Proposed Amendments delete from Section XI.(a), Regulatory and Operational Halts, the definition of ''Primary Listing Market'' in Section XI.(a)(i)(H) and the definition of ''Trading Center'' in Section XI.(a)(i)(N).

The Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(ii), Operational Halts, to state that a Participant shall notify competing consolidators and self-aggregators if it has concerns about its ability to collect and transmit quotes, orders or last sale prices, or where the Participant has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. In addition, the Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(viii), Communications, to require a Primary Listing Exchange for an Eligible Security to notify competing consolidators and self-aggregators if it determines to initiate a Regulatory Halt.

The Proposed Amendments also replace references to ''Primary Listing Market'' with ''Primary Listing Exchange'' throughout Section XI.

The Participants state that their revisions to Section XI to include references to notifying competing consolidators and self-aggregators in connection with Regulatory and Operational Halts are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational

[18] The Proposed Amendments also delete the following statement from Section VIII.(a): ''CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.''

[19] *See* Notice, *supra* note 7, 86 FR at 67801.

[20] *See id.*

[21] *See id.*

[22] *See id.*

Halts and that competing consolidators can disseminate this information to their customers.[23]

CQ Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CQ Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

Section I.—Definitions

The Proposed Amendments add a definition of ''Primary Listing Exchange'' as new Section I.(v), which means ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.''

The Proposed Amendments amend the definition of ''Quotation Information'' in Section I.(x) (formerly, Section I.(w)) to change a reference to ''consolidated BBO'' to ''NBBO,'' such that Quotation Information now means, among other things, ''(iii) each NBBO contained in the foregoing information and any identifier associated therewith . . . .''

Section IV.—Administration of This CQ Plan

The Proposed Amendments add new Section IV.(d), Plan website Disclosures, requiring the Operating Committee to publish on the CQ Plan's website the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[24]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators,'' and add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these additions are intended to comply with the requirements of Rule 614(e)(3).[25]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[26] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[27] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

(ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

Section VI.—Collection and Reporting of Quotation Information

The Proposed Amendments amend Section VI.(a), Responsibilities of Participants, to state that ''[e]ach Participant agrees to collect, and furnish to the Processor in a format acceptable to the Operating Committee, all quotation information required to be made available by such Participant by Rules 602(b)(1) of Regulation NMS. Each Participant further agrees to collect and report to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data.''

In addition, under the Proposed Amendments, Section VI.(a) states that each bid and offer with respect to an Eligible Security furnished to the Processor, competing consolidators and self-aggregators by any Participant pursuant to Plan would be accompanied by (i) the information required by Rules 602(b)(1) or 603(b) of Regulation NMS, as applicable, and (ii) the time of the bid or offer as identified by: (A) In the case of a national securities exchange, the reporting Participant's matching engine publication timestamp (reported in microseconds); or (B) in the case of a national securities association, the quotation publication timestamp that the association's bidding or offering member reports to the association's quotation facility in accordance with FINRA rules. Each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant must be accompanied by the time (reported in microseconds) the Participant made the bid and offer available to competing consolidators and self-aggregators.

With respect to national securities associations, under the Proposed Amendments, if a national securities association quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and the national securities association shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds. Additionally, Section VI.(a), as proposed to be amended, states, ''Each bid and offer with respect to an Eligible Security made by a broker or dealer otherwise than on the floor of an exchange and furnished to the Processor, Competing Consolidators, and Self-Aggregators by any Participant which is a national securities association shall, at the time furnished, be accompanied by an appropriate symbol designated by the Operating

[23] *See id.*

[24] *See id.*

[25] *See* Notice, *supra* note 7, 86 FR at 67801.

[26] 17 CFR 242.614(d)(5).

[27] *Id.*

Committee identifying such broker or dealer as required by paragraph (b)(i) of the Rule.''

The Proposed Amendments also amend Section VI.(b), Timeliness of Reporting, to add the following requirement: ''Each Participant further agrees to furnish quotation information, and changes in any such information, to the Competing Consolidator[s] and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.'' The Participants explain that this addition is designed to comply with the requirements of Rule 614(e)(1).[28]

In addition, the Proposed Amendments amend Section VI.(c), High Speed Line and Market Identifiers, to remove a reference to an ''ITS/CAES BBO'' as excepted from the requirement that each bid or offer with respect to an Eligible Security furnished to the processor by a Participant that is a national securities association shall be accompanied by the symbol identifying the broker or dealer who was reported to the Processor as having made such bid or offer otherwise than on the floor of an exchange. The Participants explain that they propose to remove this reference because references to ITS/CAES are outdated.[29]

The Proposed Amendments also amend Section VI.(e), Unusual Market Conditions, to include references to competing consolidators and self-aggregators and to remove a reference to Rule 602(b)(1)[30] and replace it with a reference to Rules 601(b)(1) and 603(b) of Regulation NMS. The Proposed Amendments also remove a reference to vendors in Section VI.(e).

Finally, the Proposed Amendments delete Section VI.(f), Description of Reporting Procedures, which requires each Participant and each other reporting party to prepare and submit to the Operating Committee and the Processor a description of the procedures by which it intends to comply with its obligations under the CQ Plan. The Participants explain that the provisions of Section VI.(f) are no longer relevant.[31]

Section VII.—Receipt and Use of Quotation Information

In Sections VII.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c) Subscriber Terminations, the Proposed Amendments replace several references to a ''CQ network's quotation information'' with the term ''consolidated market data.''

The Proposed Amendments also amend Section VII.(a) to include references to competing consolidators and self-aggregators, such that, pursuant to fair and reasonable terms and conditions, each network's administrator shall provide for: (i) The dissemination of each CQ network's quotation information on terms that are not unreasonably discriminatory to competing consolidators and self-aggregators, and (ii) the use of that CQ network's quotation information by competing consolidators and self-aggregators.

In addition, the Proposed Amendments amend Section VII.(a) to state that the Participants in both CQ networks expect that their network's administrator will require the following parties to enter into agreements with the network's administrator: (i) Any party that receives consolidated market data by means of a direct computer-to-computer interface with the Processor or competing consolidators; (ii) any competing consolidator or self-aggregator that receives quotation information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that redisseminate consolidated market data; and (iv) persons that use consolidated market data for such purposes as the CQ network's administrator may from time to time identify.

The Participants explain that the proposed revisions intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[32] They believe that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[33]

The Proposed Amendments also amend Section VII.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors of and other parties that redisseminate consolidated market data (''data redisseminators'') shall be required to be approved by a CTA network's administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a network's administrator may determine that circumstances warrant directing a data redisseminator to cease providing consolidated market data to a subscriber, and that the CQ network's Participants may direct the data redisseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network's administrator pursuant to Section VII.

III. Summary of Comments

In response to the Notice, the Commission received two comments on the Proposed Amendments.[34] Generally, both commenters oppose the Proposed Amendments and recommend that the Commission disapprove them.[35]

Both commenters argue that the Proposed Amendments contain provisions that would be irrelevant under the decentralized consolidation model. Specifically, one commenter states that the Proposed Amendments appear to continue to contain the concept of a single processor in contravention of the MDI Rules Release.[36] The other commenter argues

[28] *See* Notice, *supra* note 7, 86 FR at 67801. The Participants state that they amended Sections VIII.(a) and (b) of the CQ Plan to add the requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all quotation data in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. However, Commission staff believes they meant Section VI. instead of Section VIII. and such amendment is only present in proposed Section VI.(b) of the CQ Plan.

[29] *See* Notice, *supra* note 7, 86 FR at 67801.

[30] Specifically, ''paragraph (b)(1) of the Rule.'' *See id.,* 86 FR at 67824.

[31] *See id.,* 86 FR at 67801.

[32] *See id.*

[33] *See id.*

[34] *See* Letters to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Dec. 17, 2021) (''SIFMA Letter''); Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''MayStreet Letter'').

[35] SIFMA Letter, *supra* note 34, at 1, 8; MayStreet Letter, *supra* note 34, at 1. The Commission notes that the comment letters submitted by these commenters address both the Proposed Amendments and similar proposed amendments to the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021).

[36] SIFMA Letter, *supra* note 34, at 8.

that under the MDI Rule, only competing consolidators would sell consolidated market data to vendors and subscribers. Therefore, this commenter does not believe the sections of the Proposed Amendment that discuss vendors' and subscribers' contractual relationships with the Plan are relevant.[37] The commenter recommends that these provisions be removed or altered to reflect that the Plans no longer have agreements with vendors and end users and instead will have agreements with competing consolidators and self-aggregators related specifically to the cost of content underlying the market data.[38]

Both commenters also argue that the Proposed Amendments incorrectly treat competing consolidators in the same manner as market data vendors, despite Commission instruction to the contrary.[39] One of the commenters believes that subjecting competing consolidators to the same contractual requirements as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data vendors.[40] The commenter does not believe the contracts applicable to current data vendors will suffice for competing consolidators because the data that competing consolidators would receive from the Participants is content underlying consolidated data and different from the SIP data that data vendors receive.[41] Additionally, the commenter states that not recognizing competing consolidators as SIPs would put competing consolidators at a competitive disadvantage to market data vendors given that they take on expenses and risks that data vendors do not—such as the costs to generate consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.[42]

Separately, one commenter argues that validation procedures between competing consolidators and Participants should be similar to those between the current Processor and the Participants.[43] While this commenter acknowledges that the validation process for competing consolidators and Participants may differ from the current Processor validation process, the commenter believes that establishing validation procedures with the new competing consolidators that would be consistent across SROs is a prudent measure for ensuring data quality.[44] Finally, the commenter also believes that the Participants' description of services offered by the current plans for equity market data have confused the underlying content of consolidated market data and the consolidated market data itself.[45]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendments

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[46] and Rule 700 of the Commission's Rules of Practice,[47] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendments to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a . . . proposed amendment to a national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such . . . amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [48] Rule 608(b)(2) further provides that the Commission shall disapprove a proposed amendment if it does not make such a finding.[49] Pursuant to Rule 608(b)(2)(i) of Regulation NMS,[50] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendments are consistent with the Commission's MDI Rules as outlined in Rule 614(e); [51]
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendments are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [52]
- Whether consistent with Rule 603(a) of Regulation NMS, the Proposed Amendments provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendments, or conditions to their approval, would be required to make the Proposed Amendments necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [53]
- Whether the Proposed Amendments are consistent with Congress's finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure ''the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities''; [54] and
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,[55] the Proposed Amendments' provisions are drafted, to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS

[37] MayStreet Letter, *supra* note 34, at 3.

[38] *See id.*

[39] SIFMA Letter, *supra* note 34, at 4–5, 8; MayStreet Letter, *supra* note 34, at 3–5.

[40] MayStreet Letter, *supra* note 34, at 3–4. This commenter states that the Act requires competing consolidators to receive the data under terms that are not ''unreasonably'' discriminatory. *Id.* at 4.

[41] *See id.* at 5.

[42] *See id.*

[43] *See id.* at 4.

[44] *See id.*

[45] MayStreet Letter, *supra* note 34, at 3.

[46] 17 CFR 242.608.

[47] 17 CFR 201.700.

[48] *See* 17 CFR 242.608(b)(2).

[49] *See* 17 CFR 242.608(b)(2).

[50] 17 CFR 242.608(b)(2)(i). *See also* Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

[51] *See* MDI Rules Release, *supra* note 6.

[52] *See* 17 CFR 242.608(b)(2).

[53] *See id.*

[54] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[55] *See* 15 U.S.C. 78k–1(c)(1)(B).

plan filing.'' [56] The description of the NMS plan filing, 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.[57] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Act and the applicable rules and regulations thereunder.[58]

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[59] any request for an opportunity to make an oral presentation.[60] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendments,[61] in addition to any other comments they may wish to submit about the Proposed Amendments. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the Proposed Amendments reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators. For example, do commenters believe that Section I of the CTA Plan and Section I of the CQ Plan (both titled Definitions) appropriately define terms to accurately reflect the decentralized consolidation model consistent with the MDI Rules Release? If not, what, if any, modifications should be made to these definitions in the Proposed Amendments? Additionally, do commenters believe that the Proposed Amendments should be modified to explicitly incorporate certain terms such as Consolidated Market Data, as defined in Rule 600(b)(19) into the Plan? Similarly, Section V of the CTA Plan and Section V of the CQ Plan (both titled The Processor and Competing Consolidators) describe the evaluation and functions of the Processor, respectively. Do commenters believe that modifying the Proposed Amendments to remove the role of the Processor is necessary for the decentralized consolidation model consistent with the MDI Rules Release?

2. What are commenters' views on whether the Proposed Amendments include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators. Specifically, do commenters believe that the Proposed Amendments require the Participants to timestamp all of the data underlying Consolidated Market Data, as defined in Rule 600(b)(19), upon generation and upon provision to competing consolidators and self-aggregators? If not, should the Proposed Amendments be modified to include a requirement for such timestamping?

3. What are commenters' views on the absence of a microsecond timestamp requirement applicable to FINRA in Section VI.(c) (Consolidated Tape, Reporting Format and Technical Specifications) of the CTA Plan?

4. What are commenters' views on the proposed deletion of language in Section VIII.(a) (Collection and Reporting of Last Sale Data, Responsibility of Exchange Participants) of the CTA Plan stating, ''CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.'' Specifically, do commenters believe that this Proposed Amendment should be modified to retain the language but replace the term ''Processor'' with ''Competing Consolidators and Self-Aggregators''?

5. What are commenters' views on the following sections of the Proposed Amendments in light of the decentralized consolidation model under the MDI Rules: Section IX. (Receipt and Use of CTA Information) of the CTA Plan and Section VII. (Receipt and Use of Quotation Information) of the CQ Plan. Do commenters believe that the Proposed Amendments should be modified with respect to any of these sections to implement the decentralized consolidation model? If so, how? What are commenters' views on the use of the term ''consolidated market data'' in Section IX. of the CTA Plan? Do commenters agree with the statement by the Participants that the current market data contracts regarding the receipt of market data applicable to vendors and subscribers should be applicable to competing consolidators and self-aggregators? [62] Do commenters interpret these provisions to mean that a network's administrator must approve a competing consolidator or self-aggregator before the competing consolidator or self-aggregator can receive data and can terminate such approval of a competing consolidator or self-aggregator?

6. What are commenters' views on whether the Proposed Amendments sufficiently describe how the Plans will operate under the Initial Parallel Operation Period when ''the decentralized consolidation model will run in parallel to the existing exclusive SIP model.'' [63] Specifically, Section D of the Proposed Amendments states that Proposed Amendments will be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission. Do commenters believe that the Proposed Amendments should specify how the Participants will transition from the current Plan to the initial parallel operation period and the process after the initial parallel operation period?

7. What are commenters' views on the Proposed Amendments in light of the decentralized consolidation model with respect to (i) references to the Processor, High speed line, and Subscribers; (ii) the dissemination of Regulatory Halts; (iii) the authority of the Operating Committee under Section IV.(d) of the CTA Plan and Section IV.(b) of the CQ Plan, respectively, with respect to

[56] 17 CFR 201.700(b)(3)(ii).

[57] *Id.*

[58] *Id.*

[59] 17 CFR 242.608(b)(2)(i).

[60] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[61] *See* Notice, *supra* note 7.

[62] *See id.,* 86 FR at 67801.

[63] *See* MDI Rules Release, *supra* note 6, at Section III.H.2., 86 FR at 18698–701.

operation of the Consolidated Tape System and Consolidated Quotation System; and (iv) references to contracts with Vendors and Subscribers. Do commenters believe that the Proposed Amendments should be modified with respect to any of these provisions in light of the decentralized consolidation model required by the MDI Rules?

8. What are commenters' views on the following sections of the Proposed Amendments in light of the decentralized consolidation model: (i) CTA Plan: Parties, Administration of the CTA Plan, Potential Conflicts of Interest, The Processor and Competing Consolidators, Consolidated Tape, Collection and Reporting of Last Sale Data, Receipt and Use of CTA Information, Operational Matters, Financial Matters, Concurrent Use of Facilities, (ii) CQ Plan: Administration of this CQ Plan, The Processor and Competing Consolidators, Collection and Reporting of Quotation Information, Receipt and Use of Quotation Information, Operational Matters, Financial Matters, Concurrent Use of Facilities. Do commenters believe that the Proposed Amendments should be modified with respect to any of these sections, or any other section, in light of the decentralized consolidation model required by the MDI Rules? If so, please describe how the Proposed Amendments should be modified in light of the decentralized consolidation model required by the MDI Rules.

9. Do commenters have views about any other aspect of the Proposed Amendments? Do commenters believe that the Proposed Amendments should be modified in any other way to be consistent with the MDI Rules or the MDI Rules Release?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 23, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 6, 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–CTA/CQ–2021–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CTA/CQ–2021–02. 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 Participants' principal offices. 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 File No. SR–CTA/CQ–2021–02 and should be submitted on or before March 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Jill M. Peterson,

Assistant Secretary.

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[64] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94308; File No. S7–24–89]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

February 24, 2022.

I. Introduction

On November 5, 2021,[1] the Participants[2] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'' or ''Plan'')[3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (the ''Proposed Amendment'') to amend the UTP Plan to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[6] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[7]

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[2] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[3] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[4] 15 U.S.C 78k–1.

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (Apr. 9, 2021) (File No. S7–03–20) (''MDI Rules Release'').

[7] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021)

Continued

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Summary of the Proposed Amendment [9]

The Participants propose to amend the Plan to comply with Rule 614 of the MDI Rules. Rule 614(e) requires participants to the effective national market system plan(s) for NMS stocks to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1)–(5).[10]

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.

Rule 614(e)(2) requires the amendment to include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators.

Rule 614(e)(3) requires the amendment to include assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission.

Rule 614(e)(4) requires the amendment to include the development, maintenance and publication of a list that identifies the primary listing exchange for each NMS stock.

Rule 614(e)(5) requires the amendment to include the calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by (i) listed on the NYSE; (ii) listed on Nasdaq; and (iii) listed on exchanges other than NYSE or Nasdaq.

The following is a summary of the changes proposed to be made to the Plan by the Proposed Amendment.

Section III. Definitions

Under the Proposed Amendment, the Plan would include the following new provision: ''Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.''

The Proposed Amendment amends the definitions of ''News Service,'' ''Subscriber,'' and ''Vendor'' to add competing consolidators as a source of Transaction Reports and Quotation Information.

The Proposed Amendment adds a definition of ''Primary Listing Exchange,'' which means ''the national securities exchange on which an Eligible Security is listed.'' The proposed definition further states, ''[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.'' The Participants explain that this definition is being added to comply with the requirements of the MDI Rules and to replace the definition of ''Listing Market.'' [11]

The Proposed Amendment amends the definition of ''Quotation Information'' to define it as ''all information with respect to quotations for Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.'' Similarly, the Proposed Amendment amends the definition of ''Transaction Reports'' to mean ''all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.'' The Participants explain that these amendments are intended to track the MDI Rules more closely.[12]

Section IV. Administration of Plan

The Proposed Amendment amends Section IV.B., Operating Committee: Authority, to add references to competing consolidators and self-aggregators. Specifically, the Proposed Amendment states that the Operating Committee shall be responsible for overseeing the consolidation [13] of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to competing consolidators and self-aggregators, among other entities; that the Operating Committee shall be responsible for periodically evaluating the Processor and competing consolidators; and that the Operating Committee shall be responsible for setting the level of fees to be paid by competing consolidators and self-aggregators, among other entities, for services relating to Quotation Information or Transaction Reports in Eligible Securities, and for taking action in respect thereto in accordance with the Plan.

The Proposed Amendment also amends Section IV.B. to require the Operating Committee to publish on the Plan's website the Primary Listing Exchange for each Eligible Security, and to calculate and publish, on a monthly basis, consolidated market data gross revenues for Eligible Securities. The Participants explain that these amendments are intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(ii).[14]

Section VII. Administrative Functions

The Proposed Amendment amends this section by deleting references to the Processor. Additionally, under the Proposed Amendment, the Administrator, not the Processor, shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in the Plan. The Participants explain that the Administrative Functions described

(''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/s7-24-89/s72489.htm.*

[8] 17 CFR 242.608(b)(2)(i).

[9] The full text of the Proposed Amendment appears as Attachment A to the Notice. *See* Notice, *supra* note 7, 86 FR at 67543–55.

[10] 17 CFR 242.614(e). The Participants have submitted a separate amendment to implement the fee-related aspects of the MDI Rules. *See* Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7–24–89).

[11] *See* Notice, *supra* note 7, 86 FR at 67541. The Commission notes that the Proposed Amendment deletes a definition of ''Primary Listing Market'' from former Section X. (Section XI., as proposed), Regulatory and Operational Halts.

[12] *See* Notice, *supra* note 7, 86 FR at 67541.

[13] The Commission notes that under the decentralized consolidation model, the Operating Committee would no longer oversee the consolidation of data by the Processor, but rather the provision of data underlying consolidated market data to competing consolidators and self-aggregators. *See* Rule 603(b), 17 CFR 242.603(b); Rule 614(e)(1), 17 CFR 242.614(e)(1). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18682.

[14] *See* Notice, *supra* note 7, 86 FR at 67541.

in the section are more appropriately ascribed to the Administrator.[15]

Section VIII. Evaluation of Competing Consolidators

The Proposed Amendment adds new Section VIII to require the Operating Committee to assess the performance of competing consolidators and to submit an annual report to the Commission containing the assessment.[16] The Proposed Amendment requires this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[17]

In addition, the Proposed Amendment requires the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[18] Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.[19] The Proposed Amendment adds the following monthly performance metrics to this section:

A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

C. System availability statistics, including system up-time percentage and cumulative amount of outage time;

D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

1. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

2. When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

3. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section VIII to define the monthly performance metrics in accordance with Rule 614(d)(5).[20]

Section IX. (Previously Section VIII.) Transmission of Information to Processor, Competing Consolidators, and Self-Aggregators by Participants

The Proposed Amendment amends Section IX.A., Quotation Information, to add the requirement that each Participant collect and transmit to competing consolidators and self-aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS,[21] including all data necessary to generate consolidated market data. Additionally, the Proposed Amendment requires each Participant to make available quotation information, and changes in any such information, to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

In addition, under the Proposed Amendment, each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant pursuant to the Plan would be accompanied by the time (reported in microseconds) the Participant made such bid and offer available to Competing Consolidators and Self Aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and that FINRA shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds.

Similarly, the Proposed Amendment amends Section IX.B., Transaction Reports, to require each Participant to make available Transaction Reports to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

The Proposed Amendment also amends Section IX.B. to require Transaction Reports to competing consolidators and self-aggregators to include the time (in microseconds) that the Participant made such information available to competing consolidators and self-aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed. Additionally, the Proposed Amendment requires FINRA to convert times that its members report to it in seconds or milliseconds to microseconds and to furnish such times to the Processor, Competing Consolidators, and Self-Aggregators in microseconds. The Participants state that the amendments to Sections IX.A. and IX.B. are designed to comply with the requirements of Rule 614(e)(1) and (2).[22]

The Proposed Amendment also deletes the following statement from Section IX.B.: ''The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.''

In addition, Section IX.B. currently includes a list of types of transactions that are not required to be reported to the Processor pursuant to the Plan. The Proposed Amendment adds competing consolidators and self-aggregators as entities to which these types of transactions are not required to be reported.

Finally, the Proposed Amendment amends Section IX.D. to include references to competing consolidators

[15] *See* Notice, *supra* note 7, 86 FR at 67541.

[16] As a result of this addition, the Proposed Amendment renumbers the remaining sections of the Plan.

[17] *See* Notice, *supra* note 7, 86 FR at 67541.

[18] 17 CFR 242.614(d)(5).

[19] *Id.*

[20] *See* Notice, *supra* note 7, 86 FR at 67541–42.

[21] 17 CFR 242.603(b).

[22] *See* Notice, *supra* note 7, 86 FR at 67542. The Commission notes that the Participants state that the Proposed Amendment amends Section IX.B., Transaction Reports, to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS; however, the Proposed Amendment does not actually propose to make this change to the text of the Plan. *See* Notice, *supra* note 7, 86 FR at 67550. *See also infra* Section V, Commission's Solicitation of Comments, Request for Comment #8.

and self-aggregators. Section IX.D., as amended would read: ''Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.''

Section XI. (Previously Section X.) Regulatory and Operational Halts

The Proposed Amendment revises this section to delete the definition of ''Primary Listing Market'' from Section XI.A., Definitions for Purposes of Section XI. The Proposed Amendment also replaces references to ''Primary Listing Market'' with ''Primary Listing Exchange'' throughout Section XI.[23] The Participants state that this change would align the text of the Plan with terminology in the MDI Rules.[24]

The Proposed Amendment amends Section XI.B., Operational Halts, to state that competing consolidators and self-aggregators shall be notified by a Participant if that Participant has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. Similarly, the Proposed Amendment amends Section XI.H., Communications, to state that if a Primary Listing Exchange for an Eligible Security determines it appropriate to initiate a Regulatory Halt, it will notify competing consolidators and self-aggregators of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Exchange. The Participants state that these changes are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.[25]

Section XII. (Previously Section XI.) Hours of Operation

The Proposed Amendment amends Section XII.B.(ii) and (iii) to add references to competing consolidators and self-aggregators. Specifically, with respect to the reporting obligations of Participants, proposed Section XII.B.(ii) provides that transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor, competing consolidators, and self-aggregators between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution. And proposed Section XII.B.(iii) provides that transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor, competing consolidators, and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution.

The Proposed Amendment also amends Section XII.D. to require Participants that enter Quotation Information or submit Transaction Reports to competing consolidators and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET until 8:00 p.m. ET, to do so for all Eligible Securities in which they enter quotations.

Section XIV. (Previously Section XIII.) Financial Matters

The Proposed Amendment amends Section XIV.C., Maintenance of Financial Records, by replacing references to the Processor with references to the Administrator. The Participants explain that the responsibilities described in that section are more appropriately ascribed to the Administrator.[26]

Section XV. (Previously Section XIV.) Indemnification

The Proposed Amendment amends this section to add references to Competing Consolidators and Self-Aggregators and to remove a reference to Vendors as a recipient of Transaction Reports, Quotation Information, or other information disseminated by the Processor. Specifically, the first paragraph in this section now states: ''Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor, Competing Consolidators, and Self-Aggregators by such Participant and disseminated by the Processor, Competing Consolidators, and Self-Aggregators. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.''

Section XVIII. (Previously Section XVII.) Applicability of Securities Exchange Act of 1934

The Proposed Amendment amends this section to include Competing Consolidators and Self-Aggregators as subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

Section XIX. (Previously Section XVIII.) Operational Issues

The Proposed Amendment amends Section XIX.A. to include references to Competing Consolidators and Self-Aggregators to require each Participant to collect and validate quotes and last sale reports within its own system prior to transmitting this data to Competing Consolidators and Self-Aggregators.

Section XXI. Depth of Book Display

The Proposed Amendment deletes this section. The Participants explain that this provision is obsolete given the MDI Rules.[27]

[23] The Commission notes that the Proposed Amendment does not replace a reference to Primary Listing Market in the definition of ''Regulatory Halt'' in this section.

[24] *See* Notice, *supra* note 7, 86 FR at 67542.

[25] *See id.*

[26] *See* Notice, *supra* note 7, 86 FR at 67542.

[27] *See* Notice, *supra* note 7, 86 FR at 67542.

III. Summary of Comments

In response to the Notice, the Commission received two comments on the Proposed Amendment.[28] Generally, both commenters oppose the Proposed Amendment and recommend that the Commission disapprove it.[29]

Both commenters argue that the Proposed Amendment contains provisions that would be irrelevant under the decentralized consolidation model. Specifically, one commenter states that the Proposed Amendment appears to continue to contain the concept of a single processor in contravention of the MDI Rules Release.[30] The other commenter argues that under the MDI Rule, only competing consolidators would sell consolidated market data to vendors and subscribers. Therefore, this commenter does not believe the sections of the Proposed Amendment that discuss vendors' and subscribers' contractual relationships with the Plan are relevant.[31] The commenter recommends that these provisions be removed or altered to reflect that the Plan no longer has agreements with vendors and end users and instead will have agreements with competing consolidators and self-aggregators related specifically to the cost of content underlying the market data.[32]

Separately, one commenter argues that validation procedures between competing consolidators and Participants should be similar to those between the current Processor and the Participants.[33] While this commenter acknowledges that the validation process for competing consolidators and Participants may differ from the current Processor validation process, the commenter believes that establishing validation procedures with the new competing consolidators that would be consistent across SROs is a prudent measure for ensuring data quality.[34] Finally, the commenter also believes that the Participants' description of services offered by the current plans for equity market data have confused the underlying content of consolidated market data and the consolidated market data itself.[35]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[36] and Rule 700 of the Commission's Rules of Practice,[37] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a . . . proposed amendment to a national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such . . . amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [38] Rule 608(b)(2) further provides that the Commission shall disapprove a proposed amendment if it does not make such a finding.[39] Pursuant to Rule 608(b)(2)(i) of Regulation NMS,[40] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendment is consistent with the Commission's MDI Rules as outlined in Rule 614(e); [41]
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [42]
- Whether consistent with Rule 603(a) of Regulation NMS, the Proposed Amendment provides for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendment, or conditions to its approval, would be required to make the Proposed Amendment necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [43]
- Whether the Proposed Amendment is consistent with Congress's finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure ''the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;'' [44] and
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,[45] the Proposed Amendment's provisions are drafted to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.'' [46] The description of the NMS plan filing, 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

[28] *See* Letters to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Dec. 17, 2021) (''SIFMA Letter''); from Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (''MayStreet Letter'').

[29] SIFMA Letter, *supra* note 28, at 1, 8; MayStreet Letter, *supra* note 28, at 1. The Commission notes that the comment letters submitted by these commenters address both the Proposed Amendment and similar proposed amendments to the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plan''). *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021).

[30] SIFMA Letter, *supra* note 28, at 8.

[31] MayStreet Letter, *supra* note 28, at 3.

[32] *See id.*

[33] *See id.* at 4.

[34] *See id.*

[35] *See id.* at 3.

[36] 17 CFR 242.608.

[37] 17 CFR 201.700.

[38] *See* 17 CFR 242.608(b)(2).

[39] *See id.*

[40] 17 CFR 242.608(b)(2)(i). *See also* Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

[41] *See* MDI Rules Release, *supra* note 10.

[42] *See* 17 CFR 242.608(b)(2).

[43] *See id.*

[44] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[45] *See* 15 U.S.C. 78k–1(c)(1)(B).

[46] 17 CFR 201.700(b)(3)(ii).

affirmative Commission finding.[47] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Act and the applicable rules and regulations thereunder.[48]

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[49] any request for an opportunity to make an oral presentation.[50] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,[51] in addition to any other comments they may wish to submit about the Proposed Amendment. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the text of the Proposed Amendment reflects the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators. For example, do commenters believe that Section III of the Plan (titled Definitions) appropriately defines terms to accurately reflect the decentralized consolidation model consistent with the MDI Rules Release? If not, what, if any, modifications should be made to these definitions in the Proposed Amendment? Additionally, do commenters believe that the Proposed Amendment should be modified to explicitly incorporate certain terms such as Consolidated Market Data, as defined in Rule 600(b)(19) into the Plan? Similarly, Sections V and VI describe the selection and evaluation and functions of the Processor, respectively. Do commenters believe that modifying the Proposed Amendment to remove the role of the Processor is necessary for the decentralized consolidation model consistent with the MDI Rules Release?

2. What are commenters' views on whether the proposed revisions to the definitions of Quotation Information and Transaction Reports in Section III of the Proposed Amendment are appropriate?

3. What are commenters' views on whether the Proposed Amendment includes the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators. Specifically, do commenters believe that the Proposed Amendment requires the Participants to timestamp all of the data underlying Consolidated Market Data, as defined in Rule 600(b)(19), upon generation and upon provision to competing consolidators and self-aggregators? If not, should the Proposed Amendment be modified to include a requirement for such timestamping?

4. What are commenters' views on the proposed deletion of language in Section IX of the Proposed Amendment stating, ''The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.'' Specifically, do commenters believe that the Proposed Amendment should be modified to retain that language, but replace the term ''Processor'' with ''Competing Consolidators and Self-Aggregators''?

5. What are commenters' views on the revisions to the indemnification provisions in Section XV of the Proposed Amendment? Specifically, do commenters believe that the deletion of Vendors as a recipient of Transaction Reports, Quotation Information, ''or other information'' reported to and disseminated by the Processor, competing consolidators and self-aggregators is appropriate?

6. What are commenters' views on whether the Proposed Amendment sufficiently describes how the Plan will operate under the Initial Parallel Operation Period when ''the decentralized consolidation model will run in parallel to the existing exclusive SIP model.'' [52] Specifically, Section D of the Proposed Amendment states that it will be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission. Do commenters believe that the Proposed Amendment should specify how the Participants will transition from the current Plan to the initial parallel operation period and the process after the initial parallel operation period?

7. What are commenters' views on the proposed revisions to Section IX.B. of the Proposed Amendment that state that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed? Specifically, what are commenters' views about these proposed revisions? Do commenters believe that the Proposed Amendment should be modified to make competing consolidators and self-aggregator recipients of the time of the transmission from the FINRA trade reporting facility?

8. The description of the Proposed Amendment states that the Proposed Amendment amends Section IX.B. to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS. However, the Proposed Amendment does not make this change to the text of the Plan. Do commenters believe that the Proposed Amendment should be modified to incorporate this revision into Section IX.B.?

9. What are commenters' views on the proposed revisions to Section IX.D. of the Proposed Amendment? Do commenters believe that the statement in the section that ''the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and

[47] *See id.*

[48] *Id.*

[49] 17 CFR 242.608(b)(2)(i).

[50] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[51] *See* Notice, *supra* note 7.

[52] *See* MDI Rules Release, *supra* note 6, at Section III.H.2., 86 FR at 18698–701.

Transaction Reports to it as soon as the condition or event is terminated'' should be modified to require the Participant to resume collecting and transmitting Quotation Information and Transaction Reports to competing consolidators and self-aggregators as soon as the condition or event is terminated? Do commenters believe that the statement in the section that ''[u]pon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations'' should be modified to reference competing consolidators and self-aggregators?

10. Do commenters believe that the Proposed Amendment should be modified to replace a reference to ''Primary Listing Market'' with ''Primary Listing Exchange'' in the definition of ''Regulatory Halt'' in Section XI.A.?

11. What are commenters' views on the Proposed Amendment in light of the decentralized consolidation model with respect to (i) references to the Processor and Subscribers; (ii) the dissemination of Regulatory Halts; (iii) the authority of the Operating Committee under Section IV.B. of the Plan with respect to competing consolidators, self-aggregators, Vendors, Subscribers, News Services, and others; and (iv) references to contracts with Vendors, Subscribers, News Services and others. Do commenters believe that the Proposed Amendment should be modified with respect to any of these provisions to conform to the decentralized consolidation model required by the MDI Rules?

12. What are commenters' views on the following sections of the Proposed Amendment in light of the decentralized consolidation model: Administration of the Plan, Potential Conflicts of Interest, Selection and Evaluation of the Processor, Functions of the Processor, Market Access, Regulatory and Operational Halts, Hours of Operation, Financial Matters, Indemnification, Applicability of Securities Exchange Act of 1934, and Operational Issues. Do commenters believe that the Proposed Amendment should be modified with respect to any of these provisions to conform to the decentralized consolidation model required by the MDI Rules? If so, please describe how the Proposed Amendment should be modified to conform the Plan to the decentralized consolidation model required by the MDI Rules.

13. Do commenters have views about any other aspect of the Proposed Amendment? Do commenters believe that the Proposed Amendment should be modified in any other way to be consistent with the MDI Rules or the MDI Rules Release?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 23, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 6, 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. S7–24–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–24–89. 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 Participants' principal offices. 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 File No. S7–24–89 and should be submitted on or before March 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04333 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

[53] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94302; File No. SR–NYSEArca–2021–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Franklin Responsibly Sourced Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

February 23, 2022.

On August 23, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Franklin Responsibly Sourced Gold ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3] On September 29, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On December 6, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [8] provides that, after initiating disapproval

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92840 (September 1, 2021), 86 FR 50385.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93179, 86 FR 55033 (October 5, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93720, 86 FR 70555 (December 10, 2021).

[8] 15 U.S.C. 78s(b)(2).

proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on September 8, 2021. March 7, 2022 is 180 days from that date, and May 6, 2022 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates May 6, 2022 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–73).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2022–04212 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34517]

Application: Deregistration Under the Investment Company Act

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Blackstone Real Estate Income Fund [File No. 811–22900]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2021, April 26, 2021, August 23, 2021, and November 29, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $2,636.80 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on December 16, 2021, and amended on February 22, 2022.

Applicant's Address: Leon.Volchyok@Blackstone.com.

Blackstone Real Estate Income Fund II [File No. 811–22907]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2021, April 26, 2021, August 23, 2021, and November 29, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $3,336.80 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on December 16, 2021, and amended on February 22, 2022.

Applicant's Address: Leon.Volchyok@Blackstone.com.

Blackstone Real Estate Income Master Fund [File No. 811–22908]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2021, April 26, 2021, August 23, 2021, and November 29, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $753,832.95 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on December 16, 2021, and amended on February 22, 2022.

Applicant's Address: Leon.Volchyok@Blackstone.com.

Duff & Phelps Select MLP & Midstream Energy Fund Inc. [File No. 811–22958]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Virtus Duff & Phelps Select MLP and Energy Fund, a series of Virtus Alternative Solutions Trust and on June 25, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $250,000 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on January 25, 2022.

Applicant's Address: dmahaffey@sullivanlaw.com.

Putnam Mortgage Recovery Fund [File No. 811–22654]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 16, 2021, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $9,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on January 27, 2022.

Applicant's Address: Bryan.Chegwidden@ropesgray.com.

Schroder Series Trust [File No. 811–07840]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. The applicant has transferred its assets to Hartford Schroders Sustainable Core Bond Fund, a series of The Hartford Mutual Funds II, Inc., and on November 12, 2021 made a final distribution to its shareholders based on net asset value. Expenses of approximately $381,043.32 incurred in connection with the reorganization were paid by the applicant, the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Date: The application was filed on February 2, 2022.

Applicant's Address: sean.graber@morganlewis.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: February 25, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04385 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–247, OMB Control No. 3235–0259]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 19h–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19h–1 (17 CFR 240.19h–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19h–1 prescribes the form and content of notices and applications by self-regulatory organizations (''SROs'') regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions by SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the Rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 20 respondents will make submissions pursuant to this Rule annually. With respect to submissions for Rule 19h–1(a) notices, and based upon past submissions, the staff estimates that respondents will make a total of 11 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(a) notices is 80 hours (for a total annual burden for all respondents in the amount of 17,600 hours). With respect to submissions for Rule 19h–1(a)(4) notifications, and based upon past submissions, the staff estimates that respondents will make a total of 9 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(a)(4) notifications is 80 hours (for a total annual burden for all respondents in the amount of 14,400 hours). With respect to submissions for Rule 19h–1(b), and based upon past submissions, the staff estimates that respondents will make a total of 28 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(b) is 13 hours (for a total annual burden for all respondents in the amount of 7,280 hours). With respect to submissions for Rule 19h–1(d), and based upon past submissions, the staff estimates that respondents will make a total of 5 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(d) is 80 hours (for a total annual burden for all respondents in the amount of 8,000 hours). The aggregate annual burden for all respondents is thus approximately 47,280 hours (17,600 + 14,400 + 7,280 + 8,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication May 2, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 25, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04386 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94309; File No. SR–CTA/CQ–2021–03]

Consolidated Tape Association; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

February 24, 2022.

I. Introduction

On November 5, 2021,[1] certain participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'')[2] filed with the Securities and

[1] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021) (''Cover Letter'').

[2] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS,

Continued

Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (the ''Proposed Amendment'') to amend the Plans.[5] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Summary of the Proposed Amendment [8]

Under the Proposed Amendment, the Participants propose to amend the Plans to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rule (''MDI Rule'').[9] The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rule.[10]

The Participants propose a fee structure for the following three categories of consolidated equity market data, which collectively constitute the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:[11]

(1) Level 1 Core Data, which would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Core Data would continue to include all information that subscribers receive for current fees and add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).[12]

Professional and Nonprofessional Fees

For each of the three categories of data described above, the Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Core Data, the Participants are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month for each Network's data. Nonprofessional Subscribers would pay $4.00 per subscriber per month for each Network's depth-of-book data. The Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth-of-book data at this time.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device/subscriber per month for each Network's auction information data.

Non-Display Use Fees

The Participants propose Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Non-Display Use fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth-of-book data, subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use per Network.

With respect to auction information, subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use per Network.

Access Fees

Finally, the Participants propose Access Fees regarding the use of the three categories of data: (1) Level 1 Core Data; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Access Fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth-of-book data, subscribers would pay a monthly Access Fee of $9,850.00 per Network.

With respect to auction information, subscribers would pay a monthly Access Fee of $985.00 per Network.

Clarifications Related to Expanded Content

In addition to the above fees, the Participants propose adding clarifying language regarding the applicability of various fees given the availability of the expanded market data content.

First, the Participants propose to clarify that the Per-Quote-Packet Charges and the Broker-Dealer Enterprise Cap are not applicable to the expanded content, and only apply to the receipt and use of Level 1 Core Data.

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17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995.

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment was approved and executed by more than the Plans' required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the UTP Plan. The participants that approved and executed the amendment (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the Plans are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/sr-ctacq-2021-03/srctacq202103.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] The full text of the Proposed Amendment appears as Attachment A to the Notice. *See* Notice, *supra* note 6, 86 FR 67521–24.

[9] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (''MDI Rule Release'').

[10] *See* Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021).

[11] 17 CFR 242.600(b)(26).

[12] The Participants state that they propose to price subsets of data that constitute core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants state that they expect that competing consolidators would purchase all core data.

The Participants state that, under the current Price List, the Per-Quote-Packet Charges and Enterprise Cap serve as alternative fee schedules to the normally applied Professional and Nonprofessional Subscriber Charges, and, further, that the proposed changes are designed to clarify that these alternative fee schedules are only available with respect to the use of Level 1 Core Data, and the fees for the use of depth-of-book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. The Participants state that the Proposed Amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Participants propose to clarify that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1, depth-of-book, and auction information), including any subset thereof. According to the Participants, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants are not proposing to change the fee level for Redistribution Fees themselves.

Fourth, the Participants propose that the existing Redistribution Fees would be charged to competing consolidators. The Participants argue (1) that the comparison the Commission made in the MDI Rule Release between self-aggregators (which would not pay Redistribution Fees) and competing consolidators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory; and (2) that the Participants do not believe that the Commission's comparison is consistent with the current long-standing practice that redistribution fees are charged to any entity that distributes data externally.[13] The Participants state that, by definition, a self-aggregator would not be distributing data externally and therefore would not be subject to such fees, which, according to the Participants is consistent with current practice that a subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

The Participants state that the more appropriate comparison would be between competing consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. The Participants state that vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers, and that it would be unreasonably discriminatory for competing consolidators, which would be competing with downstream market data vendors for the same data subscriber customers, to not be charged a Redistribution Fee for exactly the same activity. The Participants argue that it would be unreasonably discriminatory and impose a burden on competition to not charge competing consolidators the Redistribution Fee.[14]

Finally, the Participants propose to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants are proposing to add headings referencing Level 1 Core Data. Additionally, under Data Access Charges and Multiple Feed Charges, the Participants are proposing to amend ''Bid-Ask'' to refer to ''Top of Book and odd-lot information.''

Administrative Fees

The Participants are not proposing any changes to the Multiple Feed Charges, Late/Clearly Erroneous Reporting Charges, and Consolidated Volume Data Non-Compliance Fee. According to the Participants, these current fees are administrative fees and would continue to apply to any data usage.

III. Summary of Comments

The Commission has received 16 comment letters on the Proposed Amendment.[15] Fourteen commenters object to the Proposed Amendment,[16] and two commenters support the Proposed Amendment.[17]

[13] The Participants state that the current exclusive securities information processor (''SIP'') is not charged a Redistribution Fee. The Participants state, however, that unlike competing consolidators, the processor has been retained by the Plans to serve as an exclusive SIP, is subject to oversight by both the Plans and the Commission, and neither pays for the data nor engages with data subscriber customers. The Participants state that, by contrast, under the competing consolidator model, the Plans would have no role in either oversight of or determining which entities choose to be a competing consolidator, a competing consolidator would need to purchase consolidated market data just as any other vendor would, and competing consolidators would be responsible for competing for data subscriber clients. Accordingly, the Participants argue that competing consolidators would be more akin to vendors than the current exclusive SIPs. The Participants state that if any entity that is currently an exclusive SIP chooses to register as a competing consolidator, such entity would be subject to the Redistribution Fee.

[14] The Participants argue that it would be more appropriate to compare competing consolidators and self-aggregators with respect to the fees charged for *receipt* and use of market data from the Participants and to address the fees for the usage of consolidated market data based on their actual usage, which, the Participants argue, is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. The Participants state that, for instance, Participants have proposed to charge a data access fee to competing consolidators that would be the same fee to self-aggregators.

[15] *See* Letters to Vanessa Countryman, Secretary, Commission from Hope M. Jarkowski, General Counsel, NYSE Group, Inc. (Jan. 22, 2022) (''NYSE Letter''); Christopher Solgan, Senior Counsel, MIAX Exchange Group (Jan.12, 2022) (''MIAX Letter''); Emil Framnes and Simon Emrich, Norges Bank Investment Management (Jan. 5, 2022) (''NBIM Letter''); James Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University (Dec. 21, 2021) (''Angel Letter''); Luc Burgun, President and CEO, NovaSparks S.A.S. (Dec. 17, 2021) (''NovaSparks Letter''); Joe Wald, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group, BMO Capital Markets and Ray Ross, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group (Dec. 17, 2021) (''BMO Letter''); Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC (Dec. 17, 2021) (''Nasdaq Letter''); John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (Dec. 17, 2021) (''IEX Letter''); Ellen Greene, Managing Director, Equity & Options Market Structure, Securities Industry and Financial Markets Association and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Dec. 17, 2021) (''SIFMA Letter''); Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority, Inc. (Dec. 17, 2021) (''FINRA Letter''); Patrick Flannery, Chief Executive Officer, MayStreet (Dec. 17, 2021) (''MayStreet Letter''); Hubert De Jesus, Managing Director, Global Head of Market Structure and Electronic Trading, BlackRock and Samantha DeZur, Director, Global Public Policy, BlackRock (Dec. 16, 2021) (''BlackRock Letter''); Jonathan Hill, CEO, Cutler Group, LP Anand Prakash, CTO, Cutler Group, LP Nader Sharabati, CFO, Cutler Group, LP and Doug Patterson, CCO, Cutler Group, LP (Dec. 16, 2021) (''Cutler Letter''); Quinton Pike, CEO, Polygon.io, Inc. (Nov. 30, 2021) (''Polygon.io Letter''); Allison Bishop, President, Proof Services LLC (Nov. 22, 2021) (''Proof Letter''); Adrian Griffiths, Head of Market Structure, MEMX LLC, (Nov. 8, 2021) (''MEMX Letter'').

[16] *See* MIAX Letter, *supra* note 15; NBIM Letter, *supra* note 15; Angel Letter, *supra* note 15; NovaSparks Letter, *supra* note 15; BMO Capital Letter, *supra* note 15; IEX Letter, *supra* note 15; SIFMA Letter, *supra* note 15; FINRA Letter, *supra* note 15; MayStreet Letter, *supra* note 15; BlackRock Letter, *supra* note 15; Cutler Letter, *supra* note 15; Polygon.io Letter, *supra* note 15; Proof Letter, *supra* note 15; MEMX Letter, *supra* note 15.

[17] *See* Nasdaq Letter, *supra* note 15; NYSE Letter, *supra* note 15.

A. Comments Regarding the Methodology Used To Justify the Proposed Fees

Some commenters oppose the Proposed Amendment, arguing that the proposed fees are based on a flawed methodology that, inconsistent with the MDI Rule Release, fails to provide a cost-based justification.[18] These commenters state that the proposal should bear a reasonable relationship to the cost of producing the market data, which, they argue, is the primary basis the Commission has identified for justifying the prices for core data fees.[19]

Some commenters also state that the methodology used has resulted in proposed fees that are unreasonably high.[20] In making this argument, some commenters object to using the current prices for the exchanges' proprietary data products as the basis for calculating the proposed core data fees,[21] stating that such a method is inconsistent with the MDI Rule's goal of expanding access to consolidated data [22] and with statements in the MDI Rule Release that the proposed fees should bear a reasonable relationship to the cost of producing the data.[23]

Some commenters also state that they disagree with the Participants' views in the proposal that a cost-based justification is not required because the Act does not require a showing of costs and that cost analysis has not been provided in past equity market data plan proposals.[24] These commenters state that the Commission has stated that a reasonable relation to cost is a primary basis for justifying core data fees.[25] One commenter states that specific information, including quantitative information, should be provided to support the Participants' claims that the proposed fee is fair and reasonable because it will permit the recovery of SRO costs or will not result in excessive pricing or profits.[26] Additionally, some commenters state that they disagree with the Participants' statement in the proposal that the Plan's Operating Committee ''has no knowledge of any costs associated with consolidated market data,'' stating that Participants know how much it costs to collect and disseminate market data because they already perform this function, including in connection with proprietary feeds.[27]

One commenter states that a demonstration of costs is not required because neither the Exchange Act nor Commission rules requires that market data fees to be supported by a showing of costs.[28] The commenter stated that the Commission's standard for evaluating consolidated market data fees has not required a showing of the relationship between the proposed fees and the cost of producing the data, as illustrated by past equity market data plan proposals for consolidated market data fees which the commenter states were not justified on the basis of cost.[29]

This commenter argues that it is not clear how the Plan could support the fee proposals based on costs because the Operating Committee plays no role in the creation or dissemination of core data under amended Rule 603(b), and thus has no information about how each exchange would generate core data under that rule.[30] The commenter states that, in its view, it remains impossible to separate the costs of producing market data from other costs of operating an exchange.[31]

Another commenter opposes the use of cost as a basis for setting the proposed fees.[32] This commenter dismisses other commenters' suggestions that fees should be based on costs, rather than value, because, according to the commenter, the Commission has not offered guidance with respect to such a cost-based ratemaking system,[33] and because any cost allocation between joint products would therefore be unworkable, inherently arbitrary, and inconsistent with the Congressional mandate that the Commission rely on competition whenever possible in meeting its regulatory responsibilities.[34] The commenter states that the proposed fees have been tested by competition and that ''Commission staff have indicated that they would look at factors beyond the competitive environment, such as cost, only if a 'proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.' '' [35]

Some commenters oppose the use of the value-based methodology used to determine the fees under the Proposed Amendment.[36] One commenter states that if the objective is to have the SIPs provide a service that is more affordable and accessible than the data products offered by individual exchanges, then ''value to subscribers'' should not be sole determinant of SIP fees because the current fees for exchange proprietary data products are not a reasonable gauge of the value of core data offered under the Plan.[37] One commenter states that

[18] *See* MIAX Letter, *supra* note 15, at 3; IEX Letter, supra note 15, at 2–3. *See also* BMO Letter, *supra* note 15, at 2–3; SIFMA Letter, *supra* note 15, at 4–5 (noting that the fees charged by monopolistic providers, such as exclusive SIPs, to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2; Proof Letter, *supra* note 15, at 2, 3; MEMX Letter, *supra* note 15, at 18.

[19] *See* IEX Letter, *supra* note 15, at 1, 2–3 (stating that the proposal fails to establish that the fees for the data content underlying consolidated market data meet the statutory standards of being fair, reasonable, and not unreasonably discriminatory); MIAX Letter, *supra* note 15, at 3. *See also* BMO Letter, *supra* note 15, at 2–3; SIFMA Letter, *supra* note 15, at 4–5 (noting that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2; Proof Letter, *supra* note 15, at 2, 3; MEMX Letter, *supra* note 15, at 18.

[20] *See* MIAX Letter, *supra* note 15, at 3; MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2, 4–5; IEX Letter, *supra* note 15, at 4; Proof Letter, *supra* note 15, at 3; MEMX Letter, *supra* note 15, at 8, 11–12.

[21] *See* MIAX Letter, *supra* note 15, at 4; SIFMA Letter, *supra* note 15, at 4, 5; IEX Letter, *supra* note 15, at 4.

[22] *See* MIAX Letter, *supra* note 15, at 4.

[23] *See* MIAX Letter, *supra* note 15, at 3; SIFMA Letter, *supra* note 15, at 4, 5; IEX Letter, *supra* note 15, at 1, 2–3.

[24] *See* MIAX Letter, *supra* note 15, at 3; SIFMA Letter, *supra* note 15, at 5.

[25] *See* IEX Letter, *supra* note 15, at 1, 2–3; SIFMA Letter, *supra* note 15, at 5; MIAX Letter, *supra* note 15, at 3 (noting that the vast majority of such equity market data plan fees were adopted prior to issuance of the Commission's staff fee guidance, and multiple SROs have more recently included cost based analysis when proposing fees for a market data product).

[26] *See* MIAX Letter, *supra* note 15, at 3.

[27] *See* SIFMA Letter, *supra* note 15, at 5; MIAX Letter, *supra* note 15, at 3; MayStreet Letter, *supra* note 15, at 6.

[28] *See* NYSE Letter, *supra* note 15, at 3 (stating that the legislative history of the 1975 amendments to the Exchange Act, and particularly Section 11A, reflects that Congress's principal concern was promoting competition between exchanges, not regulating market data pricing; and that economic studies have demonstrated that separating out the costs of producing market data from the other costs of operating an SRO is an impossible task that would enmesh the Commission in a continuous ratemaking process that would produce arbitrary results).

[29] *See id.* at 3–4.

[30] *See id.* at 4.

[31] *See id.*

[32] *See* Nasdaq Letter, *supra* note 15, at 3.

[33] *See id.*

[34] *See id.*

[35] *See id.* at 5–6 (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*). The Staff Guidance on SRO Rule Filings Relating to Fees in fact states: ''If a Fee Filing proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces, the SRO must provide a substantial basis, other than competitive forces, demonstrating that the fee is consistent with the Exchange Act. One such basis may be the production of related revenue and cost data, as discussed further below.'' *See* ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*.

[36] *See* Proof Letter, *supra* note 15; NBIM Letter, *supra* note 15; MayStreet Letter, *supra* note 15.

[37] *See* Proof Letter, *supra* note 15, at 3.

basing the proposed pricing of the Plans' fees on the proprietary feeds pricing does not seem appropriate because exchange proprietary data feeds are complements to consolidated market data feeds for latency-sensitive market participants;[38] less-latency sensitive market participants find consolidated market data more useful than the propriety data feeds;[39] and latency-sensitive market participants will not view consolidated market data under the Plans to be a credible substitute for the proprietary data feeds even after the MDI Rule reforms are implemented.[40] Another commenter states that basing the proposed fees on value instead of cost does not work because the mandate under the Exchange Act is to price SIP data at levels that maximize its availability.[41]

Two commenters argue that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data, and achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[42] One commenter argues that the pricing for exchange proprietary data feeds, including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based, is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[43] This commenter states that the pricing for exchange proprietary data feeds is constrained by the highly competitive markets for exchange trading and exchange market data.[44] It states that the proposed fees meet the Commission's objective for market forces to determine the overall level of fees.[45]

This commenter also argues that basing fees on the value of the underlying data is the fairest and most economically efficient method for setting fees because setting fees according to the value of the data leads to optimal consumption: Fees that are too low do not allow for producers to remain profitable, while fees that are too high lead to underutilization.[46] The commenter states that NMS Plans have historically used value as a fair and efficient basis for setting fees.[47] The commenter argues that the best basis for determining the value of core data are the fees currently charged for proprietary data fees, which, according to the commenter, have been ''tested by competitive forces'' and therefore provide a good starting point for estimating the value of new core data and for setting fees at efficient levels.[48] The commenter argues that the value-based methodology provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[49] The commenter states that exchanges cannot overprice the total prices of their services without potentially losing order flow and damaging its overall ability to compete.[50]According to this commenter, exchanges that produce more valuable market data generally charge higher fees, and those with less valuable data charge lower fees,[51] so fees vary according to the underlying value of the data, as measured by the liquidity available at the exchange.[52]

The commenter argues that the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably discriminatory.[53] The commenter states that Commission staff has indicated that they would look at factors beyond the competitive environment, such as cost, only if a proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.[54] The commenter argues that, because they are tested by market competition, proprietary data fees provide good and indicative starting point for estimating the value of new core data and setting fees at their efficient level.[55] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[56]

Some commenters object to the way in which the Participants used the fees of proprietary depth-of-book products to calculate a ratio (or multiplier) between those fees and the fees for proprietary top-of-book products and then multiplied existing SIP core top-of-book data fees by that multiplier to calculate the proposed depth-of-book fees for expanded core data under the MDI Rule.[57] One commenter argues that the approach adopted is arbitrary because it presupposes that the fees exchanges charge for their proprietary market data are fair and reasonable.[58] One commenter states that calculating the proposed fee levels in this manner—based on prices charged by the exchanges for their existing market data product—is not the right starting point for setting the proposed fees and inconsistent with the MDI Rule's goal of expanding access to consolidated data.[59] One commenter states that that the exchanges' ''platform competition'' argument that competition for order flow constrains pricing for market data does not demonstrate that the fees are reasonable and mentions studies it has submitted to the Commission in the past that bolster their argument.[60]

Some commenters argue that the methodology used to calculate the fees does not account for the transfer of costs from the SROs to market participants under the decentralized consolidation model.[61] One commenter states that,

[38] *See* NBIM Letter, *supra* note 15, at 1–2.

[39] *See id.* at 2.

[40] *See id.* at 2.

[41] *See* MayStreet Letter, *supra* note 15, at 6.

[42] *See* NYSE Letter, *supra* note 15, at 5; Nasdaq Letter, *supra* note 15, at 5.

[43] *See* NYSE Letter, *supra* note 15, at 5.

[44] *See id.* The commenter further argues that exchanges compete against each other as platforms, and that, as such, no exchange can raise its prices to supracompetitive levels on one side of the platform, such as market data, without losing sales on the other, such as trading volume. The commenter argues that given this inter-exchange platform competition, the exchanges' filed prices for depth-of-book data and auction information are constrained by market forces. *See id.* at 6–7.

[45] *See id.* at 5. The commenter stated that by applying that established ratio to the current prices for consolidated top-of-book data, the fee proposals thus reflect the market forces that drive the pricing of depth-of-book information in relation to top-of book information and the value that the data has to market participants. *Id.* The ratio between such filed proprietary depth-of-book fees and proprietary top-of-book data therefore provides the Commission with a benchmark for evaluating the proposed fees, which NYSE argues are fair, reasonable, and not unfairly discriminatory because they are based on this ratio, which is reflective of market forces. *See id.* at 7.

[46] *See* Nasdaq Letter, *supra* note 15, at 2.

[47] *See id.*

[48] *See id.* at 2, 6.

[49] *See id.* at 6.

[50] *See id.* at 4.

[51] *See id.*

[52] *See id.*

[53] *See id.* at 5–6.

[54] *See id.* (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*).

[55] *See id.* at 6.

[56] *See id.*

[57] *See* MIAX Letter, *supra* note 15, at 4; SIFMA Letter, *supra* note 15, at 5.

[58] *See* SIFMA Letter, *supra* note 15, at 5.

[59] *See* MIAX Letter, *supra* note 15, at 4.

[60] *See* SIFMA Letter, *supra* note 15, at 5–6.

[61] *See* MEMX Letter, *supra* note 15, at 18; MIAX Letter, *supra* note 15, at 2; BlackRock Letter, *supra* note 15, at 2–3; Polygon.io Letter, *supra* note 15, at 1. On the other hand, one commenter stated that with respect to comments that the proposal should ''back out'' fees for the current Processors from the proposed fee structure, the MDI Rule requires the current Processors to continue operating for at least

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while the proposal leaves fees for existing core data elements unchanged, the profits and operating costs of the exclusive securities information processors should be deducted from these fees to reflect the new role of competing consolidators.[62]

B. Comments Regarding the Proposed Fees

1. General Comments

Some commenters state the methodology used to calculate the proposed fees resulted in fees that are too high.[63] Some commenters state that the proposed fees have not been shown to be fair and reasonable and not unreasonably discriminatory.[64] One commenter states that the proposed fees for the content underlying consolidated market data are too high whether a cost-basis or value-basis were used as a justification by the Participants.[65] This commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds, and that market participants are currently choosing the less expensive option of top-of-book proprietary feeds,[66] which, according to the commenter, indicates that Level 1 consolidated market data is not priced in accordance with its value to the market.[67] Another commenter challenges the methodology and compares the proposed fees to fees currently charged for proprietary data fees and the proposed user and access fees for consolidated market data under the proposal to the prices that a firm would pay to obtain that data from proprietary data products that offer similar information.[68] This commenter believes that at any given price a subscriber would be better off subscribing to the proprietary data fees listed instead of purchasing consolidated market data from the SIPs given the additional information included on those feeds.[69] The commenter states that, because the proposed fees are generally more expensive than current proprietary data offering, the Proposed Amendments clearly fail the ''fair and reasonable'' test required by the Exchange Act.[70]

Some commenters state that the proposed fees would have an adverse impact on competition, and on competing consolidators in particular.[71] One commenter states that, even where the proposed fees are lower than the fees charged for comparable proprietary data, the fact that other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers.[72] Another commenter expresses concern that if the Proposed Amendment were approved the exchanges would entrench a high level of cost for market data that has no relation to their underlying expenses, is not subject to effective competitive forces, and serves as an formidable barrier to entry for newer firms.[73]

One commenter states that the Proposed Amendment conflates the prices that competing consolidators and self-aggregators pay the SROs for the underlying NMS information, and the prices that competing consolidators would charge for the consolidated data they generate.[74] This commenter believes the proposals do not make clear that the proposed fees are for the content underlying the consolidated market data, as opposed to the consolidated market data itself.[75] The commenter argues that the Participants confuse the content of consolidated market data and the consolidated market data itself,[76] and states that the Proposed Amendment sets prices at levels that the SIPs currently charge for consolidated market data.[77]

One commenter believes that any analysis of current SIP fees should include a discussion of what structural changes could be made to SIP fees to eliminate or reduce the incentives that firms have today to avoid providing SIP data to their customers.[78] One commenter believes that the current proposal will favor current market data vendors who already pay for these fees and have large customer bases, but will not necessarily use the most efficient data consolidation solutions.[79] This commenter believes that all of the equity market data plans should have a unified feed and price list because most end users today consume all of the plans' feeds.[80] Another commenter states it supports the proposed *a la carte* fee structure for the expanded elements of consolidated data because, in the commenter's view, market participants should be able to select from a variety of market data products and pay only for the content they consume.[81]

2. Fees for Top-of-Book Data

Some commenters believe that the proposed fees for Level 1 core data, which include expanded content to include odd-lot quotations, are too high.[82]

One commenter states that the proposed fees for top-of-book data should be substantially lower to allow competing consolidators to operate their business.[83] This commenter states that exchanges will no longer have to pay for the current processors and will not have the burden of maintaining custom feeds

several more years, and that therefore, there are no savings to back out of any proposed fee structure at this time. *See* NYSE Letter, supra note 15, at 7.

[62] *See* BlackRock Letter, *supra* note 15, at 2, 3–4.

[63] *See* BlackRock Letter, *supra* note 15, at 1–5; FINRA Letter, *supra* note 15, at 7; MIAX Letter, *supra* note 15, at 2; Angel Letter, *supra* note 15, at 9; NovaSparks Letter, *supra* note 15, at 1; BMO Letter, *supra* note 15, at 2–3; IEX Letter, *supra* note 15, at 1, 5; SIFMA Letter, *supra* note 15, at 1, 4–5; IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12.

[64] *See* IEX Letter, *supra* note 15, 1, at 2–3; MIAX Letter, *supra* note 15, at 2; MEMX Letter, *supra* note 15, at 22; SIFMA Letter, *supra* note 15, at 4–5; BMO Letter, *supra* note 15, at 3; FINRA Letter, *supra* note 15, at 7; MayStreet Letter, *supra* note 15, at 4; BlackRock Letter, *supra* note 15, at 2, 6; Polygon.io Letter, *supra* note 15, at 2.

[65] *See* MayStreet Letter, *supra* note 15, at 6. This commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds, and that market participants are currently choosing the less expensive option of top-of-book proprietary feeds, which, according to the commenter, indicates that Level 1 consolidated market data is not priced in accordance with its value to the market. *See id.*

[66] *See* MayStreet Letter, *supra* note 15, at 6–7.

[67] *See id.* at 7. The commenter states that Level 1 data should be priced so as to make the content available at a price that is competitive to proprietary top-of-book offerings, and that the fact that the price levels are unchanged from the current SIP prices reflects a failure by the Participants to accurately assess the value of Level 1 data. The commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and adds that the Operating Committee should consider what price point would increase availability of depth-of-book information, rather than charging a multiplier of proprietary data feeds. *See id.*

[68] *See* MEMX Letter, *supra* note 15, at 6.

[69] *See id.* at 7.

[70] *See id.* at 8.

[71] *See* MIAX Letter, *supra* note 15, at 1, 3; 4; MEMX Letter, *supra* note 15, at 2, 9; 15–17, 21–22, 25; NBIM Letter, *supra* note 15, at 2; NovaSparks Letter, *supra* note 15, at 1; IEX Letter, *supra* note 15, at 5; SIFMA Letter, *supra* note 15, at 8; FINRA Letter, *supra* note 15, at 5; MayStreet Letter, *supra* note 15, at 5; BlackRock Letter, *supra* note 15, at 1–4; Polygon.io Letter, *supra* note 15, at 3; Proof Letter, *supra* note 15, at 3; Cutler Letter, *supra* note 15, at 1.

[72] *See* MEMX Letter, *supra* note 15, at 9. The commenter further argues that it is unlikely that there will be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today. This, the commenter argues, would limit the potential customer base for competing consolidators and inappropriately impede the viability of competing consolidators under the infrastructure rule. *See* MEMX Letter, *supra* note 15, at 17.

[73] *See* Proof Letter, *supra* note 15, at 1.

[74] *See* MayStreet Letter, *supra* note 15, at 2.

[75] *See id.*

[76] *See id.* at 3.

[77] *See id.* at 6.

[78] *See* MEMX Letter, *supra* note 15, at 20.

[79] *See* NovaSparks Letter, *supra* note 15, at 1.

[80] *See id.* at 1–2.

[81] *See* BlackRock Letter, *supra* note 15, at 2–3.

[82] *See* NovaSparks Letter, *supra* note 15; IEX Letter, *supra* note 15; MayStreet Letter, *supra* note 15; BlackRock Letter, *supra* note 15; MIAX Letter, *supra* note 15.

[83] *See* NovaSparks Letter, *supra* note 15, at 1.

in specific formats since the proprietary data feeds would be used by the competing consolidators to distribute the new SIP market data.[84]

One commenter states that the net effect of the proposal is to make core data fees more expensive that proprietary data feeds, adding that it seems clear the purpose of the proposal is ''to protect existing proprietary market data fee revenues by making market data from competing consolidators prohibitively expensive and their business non-viable.'' [85] Another commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds and that market participants are choosing the less expensive option of top-of-book proprietary feeds.[86] This commenter believes this indicates that Level 1 consolidated market data is not priced in accordance with its value to the market.[87] According to the commenter, Level 1 data should be priced as to make the content available at a price that is competitive to proprietary top-of-book offerings.[88] This commenter further states that the fact that the price levels are unchanged from the current SIP prices reflects a failure by the Participants to accurately assess the value of Level 1 data.[89] Another commenter opposes the proposal and asks the Commission disapprove it as it represents an overall increase in costs, including access fees, to end users as well as competing consolidators, thereby making market data less accessible and putting competing consolidators at a disadvantage.[90]

One commenter supports certain aspects of the proposal, including its *a la carte* fee structure, and the inclusion of odd-lot quotations free of charge.[91] Moreover, some commenters expressed support for the proposed inclusion of odd-lot information free of charge in the expanded Level 1 core data,[92] with one commenter stating that this would result in top-of-book information that is more comprehensive, which should, in turn, strengthen best execution and enhance transparency and price discovery.[93]

One commenter states that the proposed Level 1 core data fees should be adjusted to reflect the new role of competing consolidators.[94] The commenter states that the MDI Rule fundamentally alters the ecosystem for market data by transitioning from exclusive SIPs to competing consolidators and that the Commission intended that this change would unbundle the data fees for consolidated market data from the fees for its consolidation and distribution because the prospective fees charged by competing consolidators would now include fees for aggregation of consolidated market data products and transmission of such products to subscribers.[95] This commenter states that in leaving fees for existing core data elements unchanged, the Proposed Amendment fails to consider, as the Commission stated in the MDI Rule Release, that the effective national market system plan for NMS stocks will no longer be operating an exclusive SIP or performing aggregation and other operational functions.[96] The commenter argues that the proposed fees should not have been left unchanged from existing core data elements fees, but rather, should have been reduced by at least 4%—the estimated SIP operating expenses excluding profits—to reflect the new role of competing consolidators, and deduct both SIP profits and operating costs from the price. According to the commenter, this 4% discount is derived directly from Commission estimates of SIP operating expenses ($16 million) and revenues ($390 million) in 2018 without any consideration of possible profits. The commenter adds that exclusive SIP profits should also be subtracted from the proposed fees for core data content, as ''any markup for consolidation services should transition to be within the purview of competing consolidators.'' [97] According to the commenter, keeping core data fees the same as the proposal purports to do would effectively ''opaquely raise prices'' for this data content.[98]

3. Fees for Depth-of-Book Data

Some commenters argue that the calculation used by the Participants to determine the proposed depth-of-book fees is flawed and inconsistent with the MDI Rule Release because the calculation uses exchange proprietary data feeds that include full order-by-order depth-of-book, inclusive of top-of-book information, rather than the more limited depth information prescribed by the MDI Rule Release.[99] These commenters point out that while the proprietary market data depth-of-book feeds used to calculate fees for the consolidated depth-of-book information include top-of-book data as part of those offerings, fees for the consolidated depth-of-book data product under the proposal do not include top-of-book.[100] Consequently, some commenters argue, subscribers to the new core data would need to pay an additional surcharge to receive top-of-book data at current rates to obtain the same data content that is available today through proprietary feeds.[101]

Some commenters question the determination of the ratio (or multiplier) used by the Participants to set the depth-of-book feeds.[102] One commenter states that fees for depth-of-book information ''should be adjusted to use a multiplier of 2.94x to eliminate the overcharging from double counting top of book data; otherwise, those who subscribe to both Level 1 and depth of book data ''would be paying twice for top of book content.'' [103]

Some commenters state that an additional problem with the adopted approach is that the proprietary depth-of-book products, such as those used in the calculation, are primarily structured as comprehensive order-by-order feeds, which do not aggregate orders at each price level.[104] According to these commenters, the depth-of-book elements prescribed by the MDI Rule warrant a lower price because they prescribe only the aggregated quotes available at the next five prices beyond the NBBO and thus include much less content than these proprietary feeds.[105] One commenter states that complete, order-by-order depth-of-book feeds, such as those used in the calculation, are likely to be associated with ''additional operational costs because of

[84] *See id.*

[85] *See* IEX Letter, *supra* note 15, at 5.

[86] *See* MayStreet Letter, *supra* note 15, at 6–7.

[87] *See id.* at 7.

[88] *See id.*

[89] *See id.*

[90] *See* Cutler Letter, *supra* note 15, at 1–2.

[91] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[92] *See* MIAX Letter, *supra* note 15, at 2; BlackRock Letter, *supra* note 15, at 1, 3; MayStreet Letter, *supra* note 15, at 2, 3, 6.

[93] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[94] *See id.* at 2–4.

[95] *See id.* at 3–4.

[96] *See id.* (citing to MDI Rule Release, 86 FR at 18685).

[97] *See id.* at 4, note 12.

[98] *See id.* at 4.

[99] *See* IEX Letter, *supra* note 15, at 3–4; MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, *supra* note 15, at 6.

[100] *See id.*

[101] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 6, 11–12; BlackRock Letter, *supra* note 15, at 4–5.

[102] *See* IEX Letter, *supra* note 15; MEMX Letter, *supra* note 15; BlackRock Letter, *supra* note 15; FINRA Letter, *supra* note 15; Angel Letter, *supra* note 15; NovaSparks Letter, *supra* note 15.

[103] *See* BlackRock Letter, supra note 15, at 4–5. *See also* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 6, 11–12.

[104] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12; BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, *supra* note 15, at 6.

[105] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5.

increased message traffic with order by order data at all price levels.[106] Accordingly, the commenter argues that an aggregated feed with only five levels of depth should have been priced at a discount relative to the corresponding exchange offerings to compensate for differences in both information content and costs.[107] One commenter argues that the proposal fails to consider pricing for other proprietary data feeds that are aggregated by price level and would therefore serve as a more logical proxy for setting core data fees.[108]

One commenter states that the proposal fails to acknowledge or account for the fact that the proposed methodology relies on this commenter's equity market data fees as one of the comparison points, notwithstanding that, unlike the other exchanges' market data prices, the commenter's fees used do not include individual per user fees, but apply only on a per firm basis for firms subscribing to ''real time data.'' [109]

Some commentators believe that the proposed fees for depth-of-book data should be lower than proposed. One commenter states that retail investors should get free or very low cost depth-of-book data because it is in the best interest of retail investors, the industry and the Commission.[110] This commenter states that displaying depth-of-book data can give investors a better understanding of how prices are formed.[111] The commenter believes that the ability for an investor to see buying and selling interests at various price levels makes it easier for the investor to understand what determines the price of a particular security by seeing the interaction of market and limit orders.[112] The commenter argues that making depth-of-book data ''cheap'' would allow brokers to give the data to retail clients for no or low cost, and that, this, in turn, would increase retail participation in the securities markets, because investors will not only understand markets better, but they will participate more in the markets.[113] According to this commenter, if depth-of-book data is expensive, it will not help most retail investors because they will not be able to afford to see it.[114]

Another commenter states that fees for depth-of-book are unreasonably high.[115] The commenter states that, while the Participants decided on an alternative method in establishing fees and sought to demonstrate that the proposed fees are ''related to the value of the data to subscribers,'' [116] the proprietary depth-of-book price inputs used by the Participants were not properly calibrated and thus are over inclusive, resulting in depth-of-book fees that are unreasonably high.[117]

One commenter agrees with the notion that that depth-of-book data should be priced higher than top-of-book data.[118] This commenter, however, believes that the charges for depth-of-book data from the Plans should be much lower than consuming the market data directly from the exchanges because the information provided under the Plan would still be a subset of what is provided by the proprietary data feeds.[119] The commenter states that the 4x ratio used by the Participants to determine the fees for accessing depth-of-book data is too high.[120]

One commenter opposes the proposed depth-of book data fees, because they, as well as all other proposed fees, represent an overall increase in costs to end users making market data less accessible, contrary to ''the core precept of the'' MDI Rule.[121] Another commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and that the Operating Committee should thus consider what price point would increase availability of depth-of-book information, rather than charging a multiplier of proprietary data feeds.[122]

One commenter expresses support for the proposed and ''moderately priced'' non-professional rate for depth-of-book information, because, in the commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which, will help broaden adoption of this new category of data.[123]

4. Fees for Auction Data

Some commenters believe that the proposed auction information fee would result in double charging for subscribers who purchase both auction and depth-of-book information.[124] According to these commenters, information about auction order imbalances is included with the proprietary depth-of-book data products used to calculate the depth-of-book prices; therefore the proposed depth-of-book prices already incorporate the fees for auction imbalance data.[125] Thus, these commenters argue that the proposed fees would result in double charging consumers who purchase both auction and depth-of-book information from competing consolidators.[126] One commenter states that depth-of-book pricing is also inappropriately used to derive the value of auction data because auction information is more closely aligned with top-of-book content which only provides high-level information about aggregate order imbalances and does not include the order by order details or data about multiple price levels typically included in proprietary depth-of-book information products.[127] One commenter states that while the

[106] *See* BlackRock Letter, *supra* note 15, at 4–5.

[107] *See* BlackRock Letter, *supra* note 15, at 4–5. *See also* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12.

[108] *See* IEX Letter, *supra* note 15, at 4.

[109] *See id.* The commenter also points out that its fees do not vary depending on the type of use made by those firms, do not apply to data that is redistributed with a delay of as little as 15 milliseconds (whereas exchanges typically require a 15-minute delay to avoid charges for real-time data), and were determined and justified based on costs. The commenter further states that, to the extent the commenter's fees are relevant at all, a more consistent approach would have been to reflect the commenter's fees as zero, since this particular commenter does not charge any fees on an individual per user basis for either of the two data products. According to the commenter, the latter approach would substantially reduce the average ratio and multiplier, and thus substantially reduce the fees proposed to be charged for core data. *See id.*

[110] *See* Angel Letter, *supra* note 15, at 3.

[111] *See id.* at 7.

[112] *See id.*

[113] *See id.* at 8.

[114] *See id.*

[115] *See* FINRA Letter, *supra* note 15, at 5–6.

[116] *See id.* at 5.

[117] *See id.* at 6. Specifically, the commenter states that (1) the proprietary depth-of-book product fees used in determining the ratio also include proprietary top-of-book data and auction data–both of which would be charged separately from depth-of-book data; (2) the depth-of-book product fees also included order-by-order depth information—which is typically considered more valuable, instead of aggregated—resulting in a higher ratio and overstatement of value; and (3) the proposed depth-of-book data product fees also included full depth information, *i.e.,* all prices levels (also typically considered more valuable), rather than just the top five price levels required under the MDI Rule, resulting in a higher ratio and fees that are not aligned with the value of the new depth-of-book data to subscribers. The commenter argues that, as a result, the method employed by the Participants does not align the proposed fees for the new depth-of-book data to the value of the data to subscribers. *See id.*

[118] *See* NovaSparks Letter, *supra* note 15, at 1.

[119] *See id.*

[120] *See id.*

[121] *See* Cutler Letter, *supra* note 15, at 1. This comment further states that the level of the proposed fees would make it difficult for such competing consolidators to offer products at prices competitive to those of proprietary feeds thereby placing competing consolidators at a disadvantage. *See id.*

[122] *See* MayStreet Letter, *supra* note 15, at 7.

[123] *See* BlackRock Letter, *supra* note 15, at 3, 5.

[124] *See* MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, note 15, at 6.

[125] *See id.*

[126] *See* BlackRock Letter, *supra* note 15, at 4–5; MEMX Letter, *supra* note 15, at 11–12; FINRA Letter, *supra* note 15, at 6.

[127] *See* BlackRock Letter, *supra* note 15, at 5.

pricing rationale in the proposal uses traded volumes to arrive at a 10% multiple for auction data, this ratio, however, is applied to the depth-of-book feed, which conveys information about displayed liquidity not trading activity. According to the commenter, (1) it would have been more congruent with the SROs' proposition to use Level 1 core data as the basis for pricing auction content as this feed is more closely associated with trade volume, and (2) the fees for auction information should be set to 10% of Level 1 core data prices.[128]

Some commenters argue that the fees for auction information under the Proposed Amendment should be lower.[129] One commenter states that retail investors should get free or moderately priced auction data because it is in the interests of retail investors, the industry and the Commission.[130] The commenter believes that opening and closing auction data are important in the securities markets and that providing auction data to retail investors will increase retail investor participation in the market.[131] The commenter also opines that it makes no sense for the Participants to charge professional and non-professionals the same amount for auction data.[132] Another commenter states that the filing should not be approved because the price levels do not contribute to a level playing field between competing consolidators and the current plan administrators, such that competing consolidators will be at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[133]

5. Fees for Professional and Non-Professional Users

Some commenters question the classification of users by professional or non-professional to develop the fees under the Proposed Amendment.[134]

One commenter states that it is unreasonably discriminatory against non-professional users to pay the same as professional users for auction data because professionals make far more use of the data.[135] The commenter states that the filing contains no justification as to why the Participants propose to charge professionals the same as non-professionals for auction data.[136]

Some commenters support moderately priced or free non-professional user fees. One commenter supports the proposed ''moderately priced'' non-professional rate for depth-of-book information, because, in the commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which, will help broaden adoption of this new category of data.[137] Another commenter states that free or moderately priced non-professional data, including depth-of-book and auction data, is in the best interest of brokers and exchanges because it may increase retail order flow and thus profits into the industry.[138] The commenter further believes that free or moderately priced non-professional data is in the best interest of the Commission as well because ''[p]roviding better data to retail investors at low cost will reduce the amount of SEC resources devoted to dealing with complaints based on misunderstandings of market function.'' [139]

Two commenters state they supported the part of the Proposed Amendment that consists of low non-professional user fees.[140] One commenter states that it believes the proposed non-professional user fees were a step in the right direction, but states that the Plan would charge fees for professional and non-professional users that are often higher than the fees charged by all of the exchange combined for proprietary products, creating disincentives for firms to take SIP data.[141] The commenter advocates for fees that would expand access to consolidated market data including free access to odd-lot quotation information as well as cheaper access to depth-of-book quotation information for non-professional users.[142]

Some commenters suggest that the Participants should not categorize fees based on user type and suggest on ways to improve the Proposed Amendment as it relates to these types of user classifications. One commenter urges the Commission to disapprove the Proposed Amendment and any future amendment that maintains non-professional and professional user classifications because such classifications prevent competing consolidators from being able to offer products at competitive prices compared to the proprietary data feeds.[143] One commenter recommends easier-to-track proxies for usage-based charges by utilizing data already reported by firms, such as FOCUS Reports.[144] Another commenter suggests slowing down the data feeds by 15 milliseconds to mitigate the risk of professionals ''masquerading'' as non-professionals utilizing the cheaper data.[145] One commenter states that the proposed professional user fees are based on a flawed methodology that fails to provide a cost based justification, and results in excessive fee levels which would discourage firms from registering as competing consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[146]

Another commenter believes that the Operating Committees should analyze whether it is fair and reasonable to continue to charge professional and non-professional user fees that exceed the fees charges for similar proprietary market data.[147] This commenter argues that the Proposed Amendment should be disapproved because, for some firms, the professional fees proposed may be higher than if the firms purchased certain proprietary data products.[148] However, another commenter responds that this analysis does not account for the fact that purchasers of the new data would be receiving a consolidated data product that aggregates all exchanges' data together to determine an NBBO and the five best levels of depth among all the exchanges and disregards that the Proposed Amendment includes much lower fees for non-professionals.[149] The commenter states that it is fair, reasonable, and not unreasonable discriminatory for ''Wall Street to pay higher fees than Main Street.'' [150]

6. Fees for Non-Display Use

Some commenters state that the proposed Non-Display Use fees are based on a flawed methodology that fails to provide a cost based justification, results in excessive fee levels which would discourage firms from registering as competing

[128] *See id.*

[129] *See* Angel Letter, *supra* note 15; Cutler Letter, *supra* note 15; BlackRock Letter, *supra* note 15.

[130] *See* Angel Letter, *supra* note 15, at 3.

[131] *See id.* at 9.

[132] *See id.*

[133] *See* Cutler Letter, *supra* note 15, at 1–2.

[134] *See* Angel Letter, *supra* note 15; BlackRock Letter, *supra* note 15; MIAX Letter, *supra* note 15; Polygon.io Letter, *supra* note 15.

[135] *See* Angel Letter, *supra* note 15, at 9–10.

[136] *See id.* at 10.

[137] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[138] *See* Angel Letter, *supra* note 15, at 11.

[139] *See id.* at 11.

[140] *See* MIAX Letter, *supra* note 15, at 2; MEMX Letter, *supra* note 15, at 3.

[141] *See* MEMX Letter, *supra* note 15, at 3, 18–19.

[142] *See id.* at 2.

[143] *See* Polygon.io Letter, *supra* note 15, at 2–3.

[144] *See* MayStreet Letter, *supra* note 15, at 8.

[145] *See* Angel Letter, *supra* note 15, at 11.

[146] *See* MIAX Letter, *supra* note 15, at 3.

[147] *See* MEMX Letter, *supra* note 15, at 20.

[148] *See id.*

[149] *See* NYSE Letter, supra note 15, at 8.

[150] *See id.*

consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[151] One commenter states that the fees in the Proposed Amendment, including the non-display fees, would place competing consolidators at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[152]

One commenter asks that the Commission reject that Amendment and any future proposal that maintains display/non-display and professional/non-professional classifications.[153] The commenter states that, if the Proposed Amendment is not rejected, competing consolidators will not be able to offer products at competitive prices to proprietary data feeds.[154]

7. Access Fees

One commenter states that the proposed Access fees are based on a flawed methodology that fails to provide a cost based justification, and results in excessive fee levels which would discourage firms from registering as competing consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[155] Another commenter stated that the proposed access fees are not fair and reasonable because they are more expensive than those fees charged by exchanges in the proprietary products.[156]

8. Redistribution Fees

Two commenters suggest that the imposition of redistribution fees on competing consolidators would place competing consolidators at a competitive disadvantage.[157] Another commenter states that by charging redistribution fees to competing consolidators, the filing creates a barrier to entry to technology solution vendors to become competing consolidators.[158]

One commenter states that the Proposed Amendment should treat competing consolidators as replacements to the exclusive SIPs, not as data vendors.[159] It states that subjecting competing consolidators to the same fees as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data vendors.[160] This commenter further states that that competing consolidators should not be charged redistribution fees because they are not redistributing consolidated market data, but generating and distributing it for the first time.[161] According to this commenter, these fees for redistribution should not be charged by the Plan because the Plan no longer would govern the distribution of consolidated market data.[162] The commenter states that by not recognizing competing consolidators as SIPs, competing consolidators are placed at a competitive disadvantage relative to data vendors given that they take on expenses and risks that data vendors do not, such as the costs for generating consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.[163]

One commenter states that the proposed redistribution fee that would be charged to competing consolidators is inconsistent with the purposes and structure of the MDI Rule, and that this aspect of the proposal represents a ''further indication that the intent of the majority was to subvert the purpose of the Commission's order.'' [164] Another commenter states that the redistribution fee for competing consolidators is inconsistent with the MDI Rule, not fair and reasonable, and unreasonably discriminatory.[165] One commenter states that the proposal's attempt to justify the redistribution fee based on the current centralized model that charges fees to downstream vendors is unsound because, under the decentralized MDI Rule, competing consolidators would be ''stepping into the role that the SIPs hold today as the primary sources of consolidated market data.'' [166] According to this commenter, to charge a redistribution fee on top of the other proposed fees would ''unquestionably put competing consolidators at a further competitive disadvantage as compared to aggregated proprietary data products offered by exchanges,'' thus targeting them in an unfair and unreasonable manner.[167]

One commenter states the Proposed Amendment directly contradicts the Commission's directive in the MDI Rule that competing consolidators not be treated the same as market data vendors.[168] It believes that Participants are attempting to undermine the Commission's authority over market data as enumerated in the CT Plan and MDI Rule in order to preserve their current revenues from proprietary and SIP data.[169] It states that the Participants have taken the position that the competing consolidators should be charged redistribution fees just like any market data vendor. It believes this undermines the efforts of the MDI Rule.[170] The commenter reiterates the Commission's statement in the MDI Rule Release that ''the Commission believes that the fees for the data content underlying consolidated market data should not include redistribution fees for competing consolidators. Competing consolidators will take the place of the exclusive SIPs in the dissemination of consolidated market data, which today do not pay redistribution fees for the consolidation and dissemination of SIP data.'' [171] The commenter argues that by treating competing consolidators differently than the exclusive SIPs, the Participants are acting in an unreasonably discriminatory manner, effectively disregarding the Exchange Act mandates in addition to the Commission's directive in the MDI Rule.[172] The commenter argues that imposing redistribution fees on competing consolidators imposes an undue burden on competition in contravention of the standards under Section 3(f) of the Exchange Act that the Commission must consider in connection with any Commission rulemaking or review of SRO rules.[173]

Two commenters state that the redistribution fees charged to competing consolidators are in contravention of the Commission's express direction in the

[151] *See* MIAX Letter, *supra* note 15, at 3; Polygon.io Letter, *supra* note 15, at 2–3.

[152] *See* Cutler Letter, *supra* note 15, at 1–2.

[153] *See* Polygon.io Letter, *supra* note 15, at 2.

[154] *See id.* at 3.

[155] *See* MIAX Letter, *supra* note 15, at 3.

[156] *See* MEMX, *supra* note 15, at 6, 8. *See also* Cutler Letter, supra note 15, at 1–2 (noting that it supports the comment letter written by MEMX and that the Proposed Amendment makes market data less accessible).

[157] *See* NBIM Letter, *supra* note 15, at 2; Cutler Letter, *supra* note 15, at 1–2.

[158] *See* NovaSparks Letter, *supra* note 15, at 1.

[159] *See* MayStreet Letter, *supra* note 15, at 3.

[160] *See id.* at 3–4.

[161] *See id.*

[162] *See id.,* at 5.

[163] *See id.*

[164] *See* IEX Letter, *supra* note 15, at 5.

[165] *See* MIAX Letter, *supra* note 15, at 2 (citing the MDI Rule Release which stated that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,'' and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.'').

[166] *See id.*

[167] *See id.*

[168] *See* SIFMA Letter, *supra* note 15, at 4–5.

[169] *See id.* at 6.

[170] *See id.* at 7.

[171] *See id.*

[172] *See id.,* at 8.

[173] *See id.*

MDI Rule and that the Proposed Amendment disregards the directive.[174]

One commenter states that, although the Commission compared competing consolidators to self-aggregators, a more appropriate comparison would be between competing consolidators and downstream vendors.[175] According to this commenter, because such vendors would be subject to redistribution fees when redistributing data to its subscribers, it would impose a burden on competition and be unfair to vendors not to charge a redistribution fee for exactly the same activity to competing consolidators.[176]

9. Broker-Dealer Enterprise Cap

One commenter favors expanding the broker-dealer enterprise cap that is part of the current fee schedule of the Plan. The commenter states that the Proposed Amendment provides no depth-of-book enterprise cap and the Level 1 enterprise caps are out of reach for most market Participants.[177] In particular, this commenter recommends that enterprise caps be implemented at multiple tiers levels.[178]

C. NMS Plan Governance

Some commenters state that the MDI Rule should be implemented through the CT Plan, as opposed to the existing market data equity plans (*i.e.,* the CTA/CQ, and Nasdaq/UTP Plans).[179] One commenter reiterated its continued support for the provisions of the CT Plan overall.[180] The commenter states that the real and potential conflicts of interest that currently exist relating to the provision of market data directly relate to the decision-making problems at the Plans' Operating Committees.[181] The commenter supports expanding the voting representation under the CT Plan to non-SROs and having them participate as full voting members of the Operating Committee.[182] The commenter believes the Commission cannot approve the Proposed Amendment given the inherent conflicts of interests of the SROs who developed the proposals.[183] The commenter states that, if the Commission approved the Proposed Amendment, it would be giving tacit approval to the shortcomings in the governance structure of the current Plans.[184]

This commenter also notes that the proposed fee amendments are explicitly stated by the Participants to be unrelated to the cost of providing the data, but rather to subscriber value.[185] The commenter states that this is a clear example of the Plan's Operating Committee failing to ensure that the public service mandates of the SIPs are achieved and is a failure in governance through the unmitigated conflicts of interest by voting members who just want to maximize profits.[186] The commenter states that further evidence of the failure of the governance structure on the Operating Committee is that the fee proposals have been proposed while the remaining reforms of the CT Plan are stayed pending resolution of challenges in the D.C. Circuit.[187] The commenter states that it is surprised that the proposals were filed without broader participation, given that certain members of the Operating Committee have stated publicly that the proposals contradict the Exchange Act standards for consolidated data which requires that the fees be fair, reasonable, and not unreasonably discriminatory.[188]

Another commenter also encourages the Commission to consider whether the CT Plan is a more appropriate body for setting fees for consolidated market data.[189] This commenter believes that placing the responsibility for setting fees in the hands of the CT Plan would allow SIP fees to be set by an Operating Committee that better reflects the constituencies impacted by this filing, including non-SRO representatives.[190] A second commenter states that the fee proposals are ''the result of a conflicted and unbalanced voting process,'' adding that it agreed with the recommendation that the responsibility for setting the proposed fees should be placed on the CT Plan.[191] A third commenter recommends that the Commission disapprove the proposal and reassign the responsibility for the filing to the Operating Committee for the CT Plan, which the commenter states would have a ''broader set of voting stakeholders and a fairer and less conflicted governance structure,'' a change that, as this proposal shows, is ''badly'' needed.[192]

One commenter asks the Commission to reevaluate the process that led to the creation of the Proposed Amendment and make substantive changes to avoid the amendment process being used to derail timely implementation of the MDI Rule.[193]

D. Consideration of Other Actions Under Rule 608 of Regulation NMS

In connection with recommending disapproval of the Proposed Amendment, one commenter states the Commission could consider potential action under Rule 608(a)(2) of Regulation NMS, which allows the Commission to directly propose amendments to effective national market system plans.[194] The commenter states that in connection with a Commission disapproval of the Proposed Amendment, it would ''support the Commission's efforts to ensure that the newly expanded consolidated market data (*i.e.,* new core data) under the Commission's Infrastructure Rule is disseminated in a manner consistent with the Exchange Act standards to ensure the investing public and all market participants have fair and reasonable access to it.'' [195]

One commenter believes that it would be inconsistent with the Exchange Act and Rule 608 for the Commission to *sua sponte* change any or all of the proposed fees, as any such change would be material to the Proposed Amendment.[196] The commenter states that, in its view, if the Commission intends to revise the Proposed Amendment in any material way, it must do so through rule-making under Rule 608(b)(2), by providing public notice of the specific changes it proposes and giving the Participants and general public an opportunity to comment.[197]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[198] and Rule 700 of the Commission's Rules of Practice,[199] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed

[174] *See* FINRA Letter, *supra* note 15, at 5; MEMX Letter, *supra* note 15, at 21.

[175] *See* NYSE Letter, supra note 15, at 7.

[176] *See id.*

[177] *See* MayStreet Letter, *supra* note 15, at 8.

[178] *See id.* at 8.

[179] *See* BMO Letter, *supra* note 15; MEMX Letter, *supra* note 15; MIAX Letter, *supra* note 15; IEX Letter, *supra* note 15; and Polygon.io Letter, *supra* note 15.

[180] *See* BMO Letter, *supra* note 15, at 1.

[181] *See id.* at 2.

[182] *See id.*

[183] *See id.*

[184] *See id.*

[185] *See id.*

[186] *See id.* at 2–3.

[187] *See id.* at 3.

[188] *See id.* (citing note 14 of the Notice, which states in part: ''FINRA, IEX, LTSE, MIAX, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at this time.'').

[189] *See* MEMX Letter, *supra* note 15, at 23–24.

[190] *See id.*

[191] *See* MIAX Letter, *supra* note 15, at 5.

[192] *See* IEX Letter, *supra* note 15, at 5.

[193] *See* Polygon.io Letter, *supra* note 15, at 3.

[194] *See* SIFMA Letter, *supra* note 15, at 2.

[195] *See id.*

[196] *See* NYSE Letter, *supra* note 15, at 8.

[197] *See id.*

[198] 17 CFR 242.608.

[199] 17 CFR 201.700.

Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a . . . proposed amendment to a national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such . . . amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [200] Rule 608(b)(2) further provides that the Commission shall disapprove a proposed amendment if it does not make such a finding.[201] Pursuant to Rule 608(b)(2)(i) of Regulation NMS,[202] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendment is consistent with the Commission's MDI Rule; [203]
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [204]
- Whether, consistent with Rule 603(a) and 614(d)(3) of Regulation NMS, the Proposed Amendment provides for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendment, or conditions to its approval, would be required to make the Proposed Amendment necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [205]
- Whether the Proposed Amendment is consistent with Congress's finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure ''the availability to brokers, dealers, and investors or information with respect to quotations for and transactions in securities;'' [206] and
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,[207] the Proposed Amendment's provisions are drafted to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.'' [208] The description of the NMS plan filing, 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.[209] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[210]

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[211] any request for an opportunity to make an oral presentation.[212] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,[213] in addition to any other comments they may wish to submit about the proposed rule changes. In particular, the Commission seeks comment on the following:

1. In the MDI Rule Release, the Commission stated that ''the fees for the data content underlying consolidated market data must satisfy the statutory standards of being fair, reasonable and not unreasonably discriminatory.'' [214] What are commenters' views as to each of the fees proposed?

2. In the Cover Letter,[215] the Participants state that ''under the decentralized competing consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data.'' The Participants further state that, under the decentralized competing consolidator model described in the MDI Rule Release, the Plan's Operating Committee no longer has a role in either specifying the technology associated with exchanges providing data or contracting with a SIP and that each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. The Participants also state that the Operating Committee will not have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). According to the Participants, the Operating Committee does not have access to any information about the cost of providing consolidated market data under the decentralized competing consolidator model.

Do commenters agree with the statements that the Participants have made with respect to their ability,

[200] *See* 17 CFR 242.608(b)(2).

[201] *See id.*

[202] 17 CFR 242.608(b)(2)(i). *See also* Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

[203] *See* MDI Rule Release, *supra* note 9.

[204] *See* 17 CFR 242.608(b)(2).

[205] *See id.*

[206] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[207] *See* 15 U.S.C. 78k–1(c)(1)(B).

[208] 17 CFR 201.700(b)(3)(ii).

[209] *Id.*

[210] *Id.*

[211] 17 CFR 242.608(b)(2)(i).

[212] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[213] *See* Notice, *supra* note 6.

[214] *See* MDI Rule Release, *supra* note 9, 86 FR at 18684.

[215] *See* Cover Letter, *supra* note 1.

current or future, to determine the costs of generating consolidated market data?

3. What are commenters' views on the Participants argument that a ''value-based'' methodology is an appropriate basis to determine the fees for core data? What are commenters' views on the methodology proposed by the Participants?

4. What are commenters' views on whether the comparison of exchanges' proprietary depth-of-book fees to the current SIP feeds is an appropriate means to calculate the ''value'' of consolidated market data? Do commenters believe that the pricing for individual exchange market data products can serve as an appropriate means for justifying the proposed fees? What are commenters' views on the prices of the depth-of-book feeds—whether by reference to cost or to prices set by a competitive market for equity market data as opposed to market power?

5. What are commenters' views on the Participants' calculation of the appropriate ratio to be applied to current SIP fees to generate the proposed fees for content underlying consolidated market data? Were appropriate depth-of-book products selected for the calculation? What are commenters' views about the ratios and methodology used generate fees?

6. Under the Proposed Amendment, the consolidated market data depth-of-book product would not include top-of-book data. What are commenters' views on basing the price of depth-of-book consolidated market data on the fees for proprietary products that include top-of-book data?

7. In the Cover Letter,[216] the Participants state that they reviewed the depth-of-book to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth), NYSE (BQT/NYSE Integrated), and IEX (TOPS/DEEP) to determine an appropriate ratio between the fees of depth-of-book core data products and the current Level 1 (top-of-book) data. The Participants further state that they believe that the 3.94x ratio represents the difference in value between top-of-book data and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b). What are commenters' views on setting fees under the Proposed Amendment based on the ratio of fees for depth-of-book and top-of-book proprietary data products?

8. Under the Proposed Amendment, the consolidated market data depth-of-book product would include only aggregate order information at each price level, not order-by-order data. What are commenters' views on whether the price of depth-of-book consolidated market data should be based on the fees for proprietary products that include order-by-order data? What are commenters' views on the selection of the referenced proprietary data products used to price the fees in the Proposed Amendment, including other exchange fees considered but not selected as a reference for the development of pricing under the Proposed Amendment?

9. Under the Proposed Amendment, the consolidated market data depth-of-book product would not include auction data, which would be sold separately. What are commenters' views on whether the price of depth-of-book consolidated market data should be based on the fees for proprietary depth-of-book products that include auction data?

10. What are commenters' views on whether users should be classified as professionals and non-professionals under the Proposed Amendment? Should non-professional subscribers to pay the same fees as professional subscribers for the auction data under the Proposed Amendment? Why or why not? Should professionals to pay a different price than non-professionals for products other than auction data under the Proposed Amendment? Why or why not? If commenters believe that classification based on user type for the contents of the consolidated market data is appropriate, do commenters support or oppose low-cost non-professional user fees? Why or why not?

11. What are commenters' views on the non-display fees in the Proposed Amendment?

12. What are commenters' views on the access fees in the Proposed Amendment? What are commenters' views on whether the Participants should charge access fees? Should competing consolidators be required to pay access fees? Why or why not? Should access fees be treated like connectivity fees, market data fees, or something else? Why or why not?

13. What are commenters' views on how the cost of purchasing consolidated top-of-book, depth-of-book, and auction data under the Proposed Amendment compares to the cost of subscribing to the existing proprietary data feeds that would contain similar or more data? What are commenters' views regarding the relationship of this comparison to the fees under the Proposed Amendment?

14. The Commission stated in the MDI Rule Release that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,''[217] and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.''[218] What are commenters' views on the justification offered by the Participants in favor of charging redistribution fees to competing consolidators? What are commenters' views regarding competing consolidators being treated similarly to data vendors and charged redistribution fees? Would charging redistribution fees to competing consolidators (and thus subjecting them to the same fees as vendors and subscribers) place them at a competitive disadvantage to the exchanges offering proprietary market data for sale? Why or why not? Do commenters believe that imposing redistribution fees on competing consolidators would impose a burden on competition? Why or why not? What are commenters' views on the level of redistribution fees in the Proposed Amendment?

15. What are commenters' views on the prices for Level 1 core data, which has been expanded to include odd-lot quotations?

16. What are commenters' views on whether the operating costs of the exclusive SIPs should be deducted from the Level 1 fees in the Proposed Amendment to reflect the new role of competing consolidators? If so, how should they be taken into account? What are commenter's views on whether the operating costs of the exclusive SIPs should be taken into account in determining the fees for depth-of-book core data? If so, how should they be taken into account? Do commenters believe that the new fees for Level 1 core data should have been proposed by the Participants? Why or why not? What are commenters' views on how any new fees for Level 1 data should have been determined?

17. Overall, what are commenters' views on the proposed prices for consolidated depth-of-book data? How do commenters believe the cost of depth-of-book data under the Plan should compare to consuming the same or similar data directly from the exchanges? Do commenters believe that

[216] *See* Cover Letter, *supra* note 1.

[217] *See* MDI Rule Release, *supra* note 9, 86 FR at 18685.

[218] *See id.,* 86 FR at 18682, n.1136.

the proposed price point for depth-of-book data would increase the availability of the information for investors? Why or why not? Do commenters believe that the calculation of the proposed depth-of-book data fee would essentially double-charge customers for top-of-book information that they would have to buy separately through the Level I feed? Why or why not?

18. What are commenters' views on the prices for auction information? Do commenters believe the proposed prices for auction information are priced too high, too low, or at the correct level? Why or why not? What are commenters' views on the lack of a distinction between prices charged to professional and non-professional users for auction information?

19. In the Cover Letter,[219] the Participants stated that, with respect to the fees for auction information, they looked to the percentage of average dialing trading volume that occurs during an auction process and determined that roughly 10% of the trading volume takes place in auctions. The Participants stated that they therefore believe that charging a fee for auction data that is 10% of the fee charged for depth-of-book data appropriately reflects the value of auction information. What are commenters' views about this method for determining the fees for auction data?

20. What are commenters' views on the lack of an enterprise fee cap in the proposal? Should enterprise caps have been proposed by the Participants for each category of data (*e.g.,* Level 1, depth-of-book, auction information)? Should multiples enterprise caps have been proposed to reflect different size enterprises? Why or why not?

21. What are commenters' views on the Participants' clarification in the Proposed Amendment that the Per-Quote-Packet Charges would not apply to the expanded market data content required by the MDI Rule and would only be available for the receipt and use of the Level 1 Service?

22. What are commenters' views on the belief of some market participants that conflicts of interest by the Participants who also sell proprietary data products have resulted in proposed fees that are not fair, reasonable, and unreasonably discriminatory? [220] What are commenters' views on whether the opinions of the advisory committee members and SROs who did not vote in favor of the Proposed Amendment should have been accommodated in the Proposed Amendment?

23. Should the Commission approve or disapprove the Proposed Amendment? Why or why not? Should the Commission approve the Proposed Amendment with modifications? If so, what modifications would be appropriate and why?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 23, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 6, 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–CTA/CQ–2021–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CTA/CQ–2021–03. 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 Participants' principal offices. 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 File No. SR–CTA/CQ–2021–03 and should be submitted on or before March 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[221]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04334 Filed 3–1–22; 8:45 am]

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[219] *See* Cover Letter, *supra* note 1.

[220] *See* Section III.C, *supra.*

[221] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94304; File No. SR–OCC–2021–014)]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Concerning The Options Clearing Corporation's Cash and Investment Management

February 24, 2022.

I. Introduction

On December 23, 2021, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2021–014 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to (i) add OCC's existing policy regarding cash and related investments to its Rules, and (ii) amend OCC's Rules governing the use of Clearing Fund contributions to ensure access in the event of the failure of an investment counterparty with whom OCC has invested cash collateral.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on January 12, 2022.[4] The Commission has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 5, at 87 FR 1819.

[4] Securities Exchange Act Release No. 93916 (Jan. 12, 2022), 87 FR 1819 (Jan. 12, 2022) (File No. SR–OCC–2021–014) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2021–803) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on January 12, 2022. Securities Exchange Act Release No. 93915 (Jan. 6, 2022), 87 FR 1814 (Jan. 12, 2022) (File No. SR–OCC–2021–803). A Notice of No Objection to the Advance Notice was published in the **Federal Register** on February 23, 2022. *See* Securities Exchange Act

received no comments regarding the substance of the Proposed Rule Change.[5] This order approves the Proposed Rule Change.

II. Background [6]

OCC is proposing to add to its Rules a policy governing OCC's cash and investment practices (the ''Cash and Investment Management Policy'' or ''Policy'') and amend its Rules regarding access to Clearing Fund contributions to address the failure of an investment counterparty to return Clearing Member cash collateral.

A. Policy Regarding Cash and Related Investments

OCC's current rules include provisions governing the management and investment of both OCC's own funds and cash deposited by Clearing Members. Pursuant to its rules, OCC's Board of Directors (''Board'') may invest funds in excess of the amount needed as working capital in Government securities or such other securities or financial instruments as theBoard may from time to time approve.[7] Further, OCC's rules allow it to invest in Government securities cash that it receives and holds from Clearing Members' margin requirements and Clearing Fund contributions.[8] OCC proposes to add its Cash and Investment Management Policy to its current investment related rules.[9]

The proposed Cash and Investment Management Policy will build on OCC's existing Rules by (i) outlining the safeguarding standards for cash and related investments managed by OCC to minimize credit and liquidity risk, and (2) providing guidelines for investments permitted by OCC's Rules as described above. With regard to safeguarding cash, the Policy would allow OCC to hold OCC Cash [10] and Clearing Member Cash [11] in demand deposit accounts with commercial banks or in accounts at a Federal Reserve Bank. Consistent with OCC's current Rules, the Policy would require OCC to move all margin and Clearing Fund cash related to a suspended Clearing Member into a liquidating settlement account for use in meeting the obligations of the Clearing Member.[12] The Policy would also require that OCC employ a bank account structure that segregates customer funds per applicable regulatory requirements [13] and OCC's By-Laws and Rules.[14]

With regard to investments, the Policy would provide that OCC's investment strategy is to preserve principal and maintain adequate liquidity. OCC outlines its specific investments in internal procedures, but will publish its investment strategy in its Qualitative Disclosures posted to OCC's public website.[15] Under the proposed Policy, OCC will invest only with counterparties that meet the financial and operational standards outlined in OCC's procedures concerning its banking relationships.[16]

The Policy would affirm OCC's current practice of not investing Clearing Fund cash, which is instead maintained in accounts at a Federal Reserve Bank or a commercial bank. The Policy would also limit the investment of margin cash to instruments that provide liquidity to OCC by the following business day. In contrast, the Policy would not limit the investment of OCC cash in excess of 110 percent of its Target Capital Requirement [17] to overnight transactions. Further, the Policy would require procedures to ensure that end-of-day margin cash balances remain above the aggregate level of any Required Cash Deposits to support OCC's management of liquidity risk.[18] Under the Policy, interest or gain received on investments will belong to OCC except as otherwise provided for in OCC's Rules.[19]

B. Access to Clearing Fund Contributions

OCC's current Rules define the conditions under which OCC may use Clearing Fund assets to make good losses or expenses suffered by OCC or by the Clearing Fund with regard to borrowings made by OCC.[20] OCC's Rules also define the conditions under which OCC may borrow Clearing Fund assets.[21] OCC's Rules address OCC's authority to access Clearing Fund assets related to the failure of a bank or clearing organization to perform its obligations to OCC, but not the failure of an investment counterparty. OCC proposes a series of changes to its Rules,

Release No. 94270 (Feb. 17, 2022), 87 FR 10262 (Feb. 23, 2022) (File No. SR–OCC–2021–803).

[5] The Commission received no comments on the Proposed Rule Change; however, since the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. The Commission received a comment letter on the Advance Notice that addressed market conduct generally; however, additional discussion is unnecessary because the substance of the letter does not bear on the basis for the Commission's decision to approve the Proposed Rule Change. Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2021-803/srocc2021803.htm.*

[6] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, *available at https://www.theocc.com/about/publications/bylaws.jsp.*

[7] *See* By-Law Art. IX, Sec. 1.

[8] *See* OCC Rule 604(a); Rule 1006(c).

[9] *See* Notice of Filing, 87 FR 1820.

[10] Under the proposed Policy, OCC Cash would include working capital related to future operating costs, inclusive of financial resources held to meet liquidity and resiliency requirements, proceeds from lines of credit, if any, maintained to support OCC's working capital, and investments made with OCC Cash. OCC Cash would also include OCC's Minimum Corporate Contribution. *See* Securities Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (Jun. 3, 2021) (File No. SR–OCC–2021–003) (establishing a persistent minimum level of OCC's own capital that it would contribute to default losses or liquidity shortfalls prior to allocating a default loss to the Clearing Fund contributions of non-defaulting Clearing Members). OCC Cash would not include cash held in respect of OCC's pension plan, post-retirement welfare plan, or other deferred compensation plans.

[11] Under the proposed Policy, Clearing Member Cash would include cash collateral deposited as margin or Clearing Fund contributions, cash held in liquidating settlement accounts for suspended Clearing Members pursuant to OCC's Rule 1104, and investments made with Clearing Member Cash. Clearing Member Cash would also include proceeds from OCC's syndicated credit facility and liquidity facilities. *See* Securities Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (Jun. 3, 2020) (File No. SR–OCC–2020–804) (discussing OCC's revolving credit facility); Securities Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444 (Jun. 16, 2020) (File No. SR–OCC–2020–803) (discussing OCC's non-bank liquidity facility).

[12] *See* OCC Rule 1104.

[13] *See* 17 CFR 39.15 (requiring a derivatives clearing organization to comply with the segregation requirements section 4d of the Commodity Exchange Act).

[14] *See* OCC By-Laws Art. VI, Sec. 3(f) (providing for maintenance of segregated futures accounts).

[15] OCC's Qualitative Disclosures are available at *https://www.theocc.com/Risk-Management/PFMI-Disclosures.*

[16] Additionally, OCC's Third-Party Risk Management Framework describes the basis for evaluating financial institutions based on financial resources and operational capacity, such as whether a relationship is structured to allow prompt access to assets and whether a custodian is a supervised and regulated institution that adheres to generally accepted accounting practices, maintains safekeeping procedures, and has controls that fully protect these assets. *See* Securities Exchange Act Release No. 90797 (Dec. 23, 2021), 85 FR 86592, 86593 (Dec. 30, 2021).

[17] OCC's Target Capital Requirement is the amount of shareholders' equity recommended by OCC management and approved by the Board to ensure compliance under both the Commission and Commodity Futures Trading Commission rules and to keep such additional amount the Board may approve for capital expenditures. *See* OCC Rule 101(T)(1).

[18] Under its Liquidity Risk Management Framework, OCC may require a Clearing Member Group to post cash collateral to supplement OCC's Available Liquidity Resources when stressed liquidity demands for that Clearing Member Group are above established thresholds or until the settlement demand is met. *See* Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446, 35449 (Jun. 10, 2020) (File No. SR–OCC–2020–003).

[19] *See e.g.,* Securities Exchange Act Release No. 82502 (Jan. 12, 2018), 82 FR 2825, 2826 (Jan. 19, 2018) (File No. SR–OCC–2017–009) (stating that OCC would pass interest income earned on Clearing Fund cash deposited at a Federal Reserve Bank through to its Clearing Members).

[20] *See* OCC Rule 1006(a) and (c).

[21] *See* OCC Rule 1006(f).

described below, to broaden OCC's authority to access Clearing Fund assets to address the potential failure of an investment counterparty to meet its obligations to OCC.

OCC proposes to amend its Rules 1006(a) and (c) to add ''investment counterparty'' to the list of counterparties whose failure to perform any obligation to OCC when due because of its bankruptcy, insolvency, receivership, suspension of operations, or any similar event that causes OCC to sustain a loss. OCC also proposes to amend its Rule 1006(f) to authorize OCC to take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which the OCC has invested Clearing Fund cash contributions if OCC reasonably believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of an investment counterparty. However, the proposed changes to Rules 1006(a), (c), and (f) would limit access to failures with respect to cash invested under Rules 604(a) and 1002(c), which deal with margin cash and Clearing Fund cash contributions, respectively.

OCC is also proposing to restate and reorganize Rule 1006(f), which currently consists of a single paragraph, into four subparagraphs with the following headings: (1) Conditions; (2) Uses; (3) Term; Clearing Fund Charge; and (4) Substitution Requests. To eliminate a potential inconsistency with Rule 1006(c), OCC would revise the condition triggering OCC's access to the Clearing Fund from failure ''to achieve daily settlement'' to failure ''to perform any obligation to the Corporation when due.'' The proposed changes to 1006(f) also include the removal of a gendered pronoun and other administrative changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[22] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(A) of the Exchange Act,[23] and Rule 17Ad–22(e)(13)[24] and Rule 17Ad–22(e)(16)[25] thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act 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 as well as to ensure the safeguarding of securities and funds which are in the custody or control of the clearing agency.[26] Based on its review of the record, and for the reasons described below, the Commission finds the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act.

The Commission believes that the proposed adoption of the Cash and Investment Management Policy would be consistent with the the safeguarding of securities and funds because the proposed changes would build on OCC's current Rules for managing cash and investments. The Policy, which OCC proposes to add to its Rules, includes standards for safeguarding OCC Cash and Clearing Member Cash through the application of OCC's counterparty standards, such as allowing OCC Cash and Clearing Member Cash to be deposited only in a Federal Reserve Bank or in demand deposit accounts with institutions that meet the standards set out in OCC's current risk management strategy to minimize the risk of loss or delay in access to such funds. Further, to support OCC's liquidity risk management practices, the Policy includes limitations on the permitted tenure of investments. The Commission believes, therefore, that adding the Policy to OCC's Rules is consistent with the safeguarding of securities and funds in OCC's custody or control.

The Commission believes that the proposed changes to broaden OCC's authority to access Clearing Fund contributions are consistent with promoting the prompt and accurate clearance and settlement of securities transactions. The proposed changes will increase OCC's authority to access Clearing Fund contributions to address losses or shortfalls arising out of the failure of an investment counterparty to perform with regard to investments, margin cash or Clearing Fund cash. In the event that a counterparty with whom OCC has invested Clearing Member Cash has failed, the proposed rule change is designed to allow OCC to access the Clearing Fund to meet OCC's payment obligations. Ensuring that OCC is able to meet its payment obligations would, in turn, reduce the likelihood of a disruption to the timely settlement of derivates contracts and related transactions, such as the payment of premiums or cash settlements arising out of exercise and assignment activities. The Commission believes, therefore, that allowing OCC access to the Clearing Fund contributions in the event of a failure of an investment counterparty would promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.

The Commission believes, therefore, that the proposal to add OCC's policy regarding cash and related investments to its Rules, and amend OCC's Rules governing the use of Clearing Fund contributions to ensure access in the event of the failure of an investment counterparty with whom OCC has invested cash collateral, is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[27]

B. Consistency With Rule 17Ad–22(e)(13) Under the Exchange Act

Rule 17Ad–22(e)(13) under the Exchange Act requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority to take timely action to contain losses and liquidity demands and continue to meet its obligations.[28]

As the Commission has observed previously, OCC relies on the resources in its Clearing Fund to manage the potential losses arising out of the default of a Clearing Member under extreme but plausible market conditions.[29] OCC also relies on such resources to manage potential liquidity shortfalls arising out of the default of a Clearing Member under extreme but plausible market conditions.[30] In the event of a Clearing

[22] 15 U.S.C. 78s(b)(2)(C).

[23] 15 U.S.C. 78q–1(b)(3)(A).

[24] 17 CFR 240.17Ad–22(e)(13).

[25] 17 CFR 240.17Ad–22(e)(16).

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 17 CFR 240.17Ad–22(e)(13).

[29] *See* Securities Exchange Act Release No. 87717 (Dec. 11, 2019), 84 FR 68985, 68987 (Dec. 17, 2019) (File No. SR–OCC–2019–009).

[30] *See* Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446, 35450 (Jun. 10, 2020) (File No. SR–OCC–2020–003) (stating that cash contributions to the Clearing fund serve as an important source of liquidity and that non-cash

Member default, unless it has access to the Clearing Fund contributions of non-defaulting Clearing Members, OCC's inability to access the defaulter's cash collateral due to the failure of an investment counterparty could inhibit OCC's ability to contain losses and liquidity demands. The Commission also believes that the proposed changes to restate and reorganize Rule 1006(f) would enhance the rule's clarity, and therefore help ensure OCC's authority to access Clearing Fund contributions to address losses or shortfalls arising out of the failure of an investment counterparty to perform with regard to investments of margin cash or Clearing Fund cash.

The Commission believes, therefore, that the proposed changes to broaden OCC's authority to access to Clearing Fund contributions are consistent with Rule 17Ad–22(e)(13) under the Exchange Act.[31]

C. Consistency With Rule 17Ad–22(e)(16) Under the Exchange Act

Rule 17Ad–22(e)(16) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.[32] In adopting Rule 17Ad–22(e)(16), the Commission provided guidance for consideration by covered clearing agencies.[33] Such guidance included the consideration of whether a covered clearing agency's investment strategy is consistent with its overall risk management strategy and fully disclosed to participants.[34]

The Commission believes that the proposed Cash and Investment Management Policy would support and enhance OCC's current Rules regarding the investment of its and its participants' cash assets. As described above, the Policy outlines safeguarding standards, such as allowing OCC Cash and Clearing Member cash to be deposited only in a Federal Reserve Bank or in demand deposit accounts with institutions that meet the standards set out in OCC's current risk management strategy (*e.g.,* OCC's Third Party Risk Management Framework) to minimize the risk of loss or delay in access to such funds. The Commission believes further that limiting the investment of cash to Government Securities, and specifically limiting the investment of Clearing Member Cash to instruments that provide liquidity to OCC by the following business day, is consistent with investing in assets with minimal credit, market, and liquidity risks.[35]

The Commission believes, therefore, that the addition of the Cash and Investment Management Policy to OCC's Rules is consistent with Rule 17Ad–22(e)(16) under the Exchange Act.[36]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[37] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[38] that the Proposed Rule Change (SR–OCC–2021–014) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04330 Filed 3–1–22; 8:45 am]

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contributions provide a source of collateral necessary for OCC to access sources of liquidity).

[31] 17 CFR 240.17Ad–22(e)(13).

[32] 17 CFR 240.17Ad–22(e)(16).

[33] Covered Clearing Agency Standards, 81 FR at 70837.

[34] *Id.*

[35] The Policy would allow OCC to invest its own cash in longer-tenured instruments only where such cash is in excess of 110 percent of OCC's Target Capital Requirement.

[36] 17 CFR 240.17Ad–22(e)(16).

[37] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94305]

Securities Exchange Act of 1934; Notice of Intention To Cancel Registration of Certain Municipal Advisors Pursuant to Section 15b(C)(3) of the Securities Exchange Act of 1934

February 24, 2022.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 15B(c)(3) of the Securities Exchange Act of 1934 (the ''Act''), cancelling the municipal advisor registration of Meno Accounting & Financial Services (CIK 0001622155, File No. 867–01015) (hereinafter referred to as the ''registrant'').

Section 15B(c)(3) of the Act provides, in pertinent part, that if the Commission finds that any municipal advisor registered under Section 15B is no longer in existence or has ceased to do business as a municipal advisor, the Commission, by order, shall cancel the registration of such municipal advisor.

Accordingly, the Commission finds that the registrant (a) is no longer in existence and is not registered as a municipal advisor with the MSRB under MSRB Rule A–12(a) and/or (b) does not have an associated person who is qualified as a municipal advisor representative under MSRB Rule G–3(d) and for whom there is a Form MA–I required by 17 CFR 240.15Ba1–2(b) available on EDGAR.

Notice is also given that any interested person may, by March 28, 2022, at 5:30 p.m. Eastern Time, submit to the Commission in writing a request for a hearing on the cancellation of the registration of the registrant, accompanied by a statement as to the nature of such person's interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and such person may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed to the Commission's Secretary at the address below.

At any time after March 28, 2022, the Commission may issue an order or orders cancelling the registration of the registrant, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with Rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Mark Elion, Attorney Advisor, Office of Municipal Securities, 100 F Street NE, Washington, DC 20549, or at (202) 551–5680.

[1] 17 CFR 200.30–3a(a)(1)(ii).

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.[1]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04331 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–61, OMB Control No. 3235–0073]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form S–3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–3 (17 CFR 239.13) is a short form registration statement used by domestic issuers to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–3 takes approximately 466.4566 hours per response and is filed by approximately 1,651 issuers annually. We estimate that 25% of the 466.4566 hours per response (116.6141 hours) is prepared by the issuer for a total annual reporting burden of 192,530 hours (116.6141 hours per response × 1,651 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by May 2, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 25, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04387 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94311; File No. SR–NASDAQ–2021–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 2, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing Primary Offering

February 24, 2022

On June 11, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to modify certain pricing limitations for companies listing in connection with a direct listing primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 30, 2021.[4] On August 12, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On September 24, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

On December 20, 2021, the Commission extended the time period for approving or disapproving the proposal to February 25, 2022.[9] On December 22, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as originally filed.[10] Amendment No. 2 was published for comment in the **Federal Register** on January 12, 2022.[11]

This order disapproves the proposed rule change, as modified by Amendment No. 2, because, as discussed below, Nasdaq has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

I. Description of the Proposal, as Modified by Amendment No. 2

Nasdaq Listing Rule IM–5315–2 provides listing requirements for Nasdaq's Global Select Market for a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Exchange at the time of effectiveness of a registration statement[12] pursuant to which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 92256 (June 24, 2021), 86 FR 34815 (June 30, 2021) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-045/srnasdaq2021045.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 92649, 86 FR 46295 (August 18, 2021). The Commission designated September 28, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 93119 (September 24, 2021), 86 FR 54262 (September 30, 2021) (''OIP'').

[9] *See* Securities Exchange Act Release No. 93830, 86 FR 73071 (December 23, 2021).

[10] On December 21, 2021, Nasdaq submitted Amendment No. 1, which was subsequently withdrawn.

[11] *See* Securities Exchange Act Release No. 93924 (January 6, 2022), 87 FR 1797 (January 12, 2022) (''Amended Notice'').

[12] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[13] A Direct Listing with a Capital Raise includes listings where either: (i) Only the company itself is

Securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must begin trading on the Exchange following the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9) and Nasdaq Rule 4753 for the opening auction, otherwise known as the Nasdaq Halt Cross.[14] Currently, in the case of a Direct Listing with a Capital Raise, the Exchange will release the security for trading on the first day of listing if, among other things, the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement[15] (the ''Pricing Range Limitation''). The Exchange has proposed to modify the Pricing Range Limitation to provide that the Exchange would release the security for trading if (a) the actual price calculated by the Nasdaq Halt Cross is at or above the price that is 20% below the lowest price, and at or below the price that is 20% above the highest price, of the disclosed price range; or (b) the actual price calculated by the Nasdaq Halt Cross is at a price above the price that is 20% above the highest price of such price range, provided that, among other things, the company has publicly disclosed and certified to the Exchange that the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering exceed the amount assumed in such price range and that the company does not expect that such price would materially change the company's previous disclosure in its effective registration statement.[16] The Exchange would calculate the 20% threshold based on the maximum offering price set forth in the registration fee table in the company's effective registration statement, which the Exchange argues is consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.[17] The Exchange has also proposed to make related conforming changes.

Currently Nasdaq Rule 4120(c)(9)(B) states that, notwithstanding the provisions of Nasdaq Rule 4120(c)(8)(A) and (c)(9)(A), in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, the Exchange, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade. The Exchange will release the security for trading if: (i) All market orders will be executed in the Nasdaq Halt Cross; and (ii) the actual price calculated by the Nasdaq Halt Cross complies with the Pricing Range Limitation. The Exchange will postpone and reschedule the offering only if either or both of such conditions are not met.[18] The Exchange states that if there is insufficient buy interest to satisfy the CDL Order[19] and all other market orders, as required by the current rule, or if the actual price calculated by the Nasdaq Halt Cross is outside the disclosed price range, the Nasdaq Halt Cross would not proceed and such security would not begin trading.[20]

According to the Exchange, based on conversations it has had with companies and their advisors, the Exchange believes that some companies may be reluctant to use the existing rules for a Direct Listing with a Capital Raise because of concerns about the Pricing Range Limitation.[21] The Exchange states that the Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of a failed offering, because the offering cannot proceed without some delay not only due to lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated.[22] According to the Exchange, the Exchange believes that there may be instances of offerings where the price determined by the Exchange's opening auction will exceed the highest price of the price range disclosed in the company's effective registration statement.[23] The Exchange states that, under the existing rule, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by the Exchange if the actual price calculated by the Nasdaq Halt Cross is above the highest price of the disclosed price range.[24] The Exchange further states that, in this case, the Exchange would have to cancel or postpone the offering until the company amends its effective registration statement, and that, at a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event.[25] In addition, the Exchange states that the determination of the public offering price of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which, in the Exchange's view, could make companies reluctant to use this alternative method of going public despite its expected potential benefits.[26]

The Exchange has proposed to modify the Pricing Range Limitation such that even if the actual price calculated by the

selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See* Nasdaq Listing Rule IM–5315–2. *See also* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected) (''2021 Order''). The Exchange's rules provide for a company listing pursuant to a Direct Listing with a Capital Raise to list only on the Nasdaq Global Select Market.

[14] *See* Nasdaq Listing Rule IM–5315–2. ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Nasdaq Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Nasdaq Halt Cross. *See* Nasdaq Rule 4753(a)(5). Pursuant to Nasdaq Rule 4120, the Exchange will halt trading in a security that is the subject of an initial public offering (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Nasdaq Rule 4120(a)(7) and (c)(8).

[15] The Exchange states that references in the proposal to the price range established by the issuer in its effective registration statement refer to the price range disclosed in the prospectus in such effective registration statement. *See* Amended Notice, *supra* note 11, 87 FR at 1799 n.14. Throughout this order, we refer to this as the ''disclosed price range.''

[16] *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)c. *See also* Amended Notice, *supra* note 11, 87 FR at 1799.

[17] *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii)c.3.

[18] *See* Nasdaq Rule 4120(c)(9)(B).

[19] A ''Company Direct Listing Order'' or ''CDL Order'' is a market order that may be entered only on behalf of the issuer and may be executed only in the Nasdaq Halt Cross for a Direct Listing with a Capital Raise. The CDL Order is entered without a price (with a price later set in accordance with the requirements of Nasdaq Rule 4120(c)(9)(B)), must be for the quantity of shares offered by the issuer as disclosed in its effective registration statement, must be executed in full in the Nasdaq Halt Cross, and may not be canceled or modified. *See* Nasdaq Rule 4702(b)(16).

[20] *See* Amended Notice, *supra* note 11, 87 FR at 1799. The Exchange represents that in such event, because the Nasdaq Halt Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms. *See id.*

[21] *See id.* The Exchange states that a Direct Listing with a Capital Raise could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors, because, unlike in a traditional firm commitment underwritten public offering (''IPO''), the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. *See id.*

[22] *See id.* at 1800. The Exchange states that if an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

Nasdaq Halt Cross is outside the disclosed price range, the Exchange would release a security for trading if the actual price at which the Nasdaq Halt Cross would occur is at or above the price that is 20% below the lowest price of the disclosed price range and at or below the price that is 20% above the highest price of the disclosed price range, provided all other necessary conditions are satisfied, and that the company has specified the quantity of shares registered, as permitted by Securities Act Rule 457.[27] In addition, under the proposal, the Exchange would release the security for trading, provided all other necessary conditions are satisfied, at a price more than 20% above the highest price of the disclosed price range, if the company publicly disclosed and has certified to the Exchange prior to the beginning of the Display Only Period [28] that the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement, the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering exceed the amount assumed in the price range established by the issuer in its effective registration statement, and the price range in the preliminary prospectus included in its effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K.[29] The Exchange states that the goal of the requirement is to have disclosure that allows investors to see how changes in share price ripple through critical elements of the disclosure.[30]

The Exchange states that it believes that its proposed approach is consistent with Securities Act Rule 430A and staff guidance, which, according to the Exchange, generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[31] According to the Exchange, the Exchange believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.[32] The Exchange states that, accordingly, the Exchange believes that a company listing in connection with a Direct Listing with a Capital Raise can specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.[33] The Exchange states that, for the purposes of this rule, the 20% threshold would be calculated based on the maximum offering price set forth in the registration fee table, and that this method of calculation is consistent with the SEC Staff's guidance on Securities Act Rule 430A.[34]

According to the Exchange, given that there may be a Direct Listing with a Capital Raise that could price outside of the disclosed price range and that there may be no upside limit above which the Nasdaq Halt Cross could not proceed, the Exchange proposes to enhance transparency by providing readily available, real time pricing information to investors.[35] To that end, the Exchange states that it would disseminate, free of charge, the Current Reference Price on a public website, such as *Nasdaq.com*, during the Pre-Launch Period and indicate whether the Current Reference Price is within the disclosed price range.[36] The Exchange also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade.[37] The ''Price Volatility Constraint'' would require that the Current Reference Price has not deviated by 10% or more from any Current Reference Price within the previous 10 minutes.[38] The Exchange states that the Price Volatility Constraint would provide investors with notice that the Nasdaq Halt Cross nears execution.[39] The Pre-Launch Period would continue until the Price Volatility Constraint has been satisfied.[40] Further, the Pre-Launch Period shall end, and the security shall be released for trading when the Exchange, in consultation with the financial advisor to the issuer, makes the determination that the security is ready to trade and the conditions in proposed Nasdaq Rule 4120(c)(9)(B)(vii) and (viii) are met.[41]

The Exchange also proposes to prohibit market orders (other than by the company through its CDL Order) from the opening of a Direct Listing with a Capital Raise.[42] The Exchange states that this would assure that investors only purchase shares at a price at or better than the price they affirmatively set, after having the opportunity to review the company's effective registration statement, including the sensitivity analysis describing how the company would use any additional proceeds raised.[43]

In addition, the Exchange states that to protect investors and assure that they are informed about the attributes of a Direct Listing with a Capital Raise, the Exchange proposes to impose specific requirements on Nasdaq members with respect to a Direct Listing with a Capital Raise.[44] These rules would require members to provide to a customer, before that customer places an order to be executed in the Nasdaq Halt Cross, a notice describing the mechanics of pricing a security subject to a Direct Listing with a Capital Raise in the

[27] *See id. See also infra* notes 31 and 33 and accompanying text.

[28] *See* Nasdaq Rule 4120(c)(7)(A) and proposed Nasdaq Rule 4120(c)(9)(B)(iii)–(v) for a description of the ''Display Only Period.''

[29] *See* Amended Notice, *supra* note 11, 87 FR at 1800; proposed Nasdaq Rule 4120(c)(9)(B)(vii)c.2.

[30] *See* Amended Notice, *supra* note 11, 87 FR at 1800.

[31] *See id.* The Exchange states that Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, and the Exchange proposes to require that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See id.* at 1800 n.20. The Exchange also states that the Exchange believes that the proposed modification of the Pricing Range Limitation is consistent with the protection of investors, because, according to the Exchange, this approach is similar to the pricing of an IPO where an issuer is permitted to price outside of the disclosed price range in accordance with the SEC Staff's guidance. *See id.* at 1802.

[32] *See id.* at 1800.

[33] *See id.*

[34] *See id.*

[35] *See id.*

[36] *See id. See* Nasdaq Rule 4753(a)(3) for a description of the ''Current Reference Price'' and Nasdaq Rule 4120(c)(8)(A) and proposed Nasdaq Rule 4120(c)(9)(B)(v)–(vii) for a description of the ''Pre-Launch Period.''

[37] *See* Amended Notice, *supra* note 11, 87 FR at 1800–01.

[38] *See id.* at 1801.

[39] *See id.*

[40] *See id.*

[41] *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii).

[42] *See* Amended Notice, *supra* note 11, 87 FR at 1801.

[43] *See id.*

[44] *See id.*

Nasdaq Halt Cross, including information regarding the location of the public website where the Exchange would disseminate the Current Reference Price.[45]

The Exchange states that to assure that members have the necessary information to be provided to their customers, the Exchange proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Direct Listing with a Capital Raise, an information circular to its members.[46] This information circular would describe any special characteristics of the offering and the Exchange's rules that apply to the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9)(B) and Nasdaq Rule 4753 for the opening auction, including information about the notice that members must provide to their customers.[47] The information circular would also describe other requirements that: (a) Require members to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer; (b) require members in recommending transactions for a security subject to a Direct Listing with a Capital Raise to have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security; and (c) require members not to accept market orders to be executed in the Nasdaq Halt Cross.[48] The Exchange states that these member requirements are intended to remind members of their obligations to ''know their customers,'' increase transparency of the pricing mechanisms of a Direct Listing with a Capital Raise, and help assure that investors have sufficient price discovery information.[49]

The Exchange represents that in each instance of a Direct Listing with a Capital Raise, the Exchange's information circular would inform market participants that the auction could price up to 20% below the lowest price of the price range and would specify that price. The Exchange also represents that it would indicate in such circular whether or not there is an upside limit above which the Nasdaq Halt Cross could not proceed, based on the company's certification.[50]

The Exchange states that to assure that the issuer has the ability, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, the Exchange proposes to introduce to the operation of the Nasdaq Halt Cross a brief Post-Pricing Period, in circumstances where the actual price calculated by the Nasdaq Halt Cross is above the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement.[51] Specifically, in such circumstances, the Exchange would initiate a ''Post-Pricing Period'' following the calculation of the actual price.[52] During the Post-Pricing Period, the issuer must confirm to the Exchange that no additional disclosures are required under the federal securities laws based on the actual price calculated by the Nasdaq Halt Cross. Further, during this period no additional orders for the security could be entered in the Nasdaq Halt Cross, and no existing orders could be modified.[53] The Exchange states that the security would be released for trading immediately following the Post-Pricing Period.[54] However, if the Company cannot provide the required confirmation, then the Exchange would postpone and reschedule the offering.[55]

The Exchange also proposes to clarify several provisions of existing Nasdaq Rule 4120(c)(9) without changing them.[56] Specifically, the Exchange proposes to clarify the mechanics of the Nasdaq Halt Cross by specifying that the Exchange will initiate a 10-minute Display Only Period only after the CDL Order has been entered and that the Exchange shall select price bands for purposes of applying the price validation test in the Nasdaq Halt Cross in connection with a Direct Listing with a Capital Raise.[57] The Exchange proposes to clarify that the ''actual price,'' as the term is used in the rule, is the Current Reference Price at the time the system applies the price validation test.[58]

Nasdaq Listing Rule IM–5315–2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares[59] for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement[60] if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise, is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million). For this purpose, under current rules, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the disclosed price range.[61] The Exchange states that because the Exchange proposes to allow the opening auction to price up to 20% below the lowest price of the disclosed price range, the Exchange proposes to make a conforming change to Nasdaq Listing Rule IM–5315–2 to provide that the price used to determine such company's compliance with the required Market Value of Unrestricted Publicly Held Shares would be the price per share equal to the price that is 20% below the lowest price of the disclosed price range.[62] The Exchange further states that this is the minimum price at which the company could qualify to be listed.[63]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least

[45] *See id.*

[46] *See id.* The Exchange states that an information circular is an industry-wide, free service provided by the Exchange. *See id.* at 1801 n.21.

[47] *See id.* at 1801.

[48] *See id.;* proposed Nasdaq Rule 4120(c)(9)(B)(i).

[49] *See* Amended Notice, *supra* note 11, 87 FR at 1801.

[50] *See id.* The Exchange states that it believes that investors have become familiar with the approach of pricing an IPO outside of the price range stated in an effective registration statement. *See id.* at 1803.

[51] *See id.* at 1801.

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See* Amended Notice, *supra* note 11, 87 FR at 1802.

[57] *See id.* The Exchange would select an upper price band and a lower price band with the default for an upper and lower price band set at zero. The Exchange represents that if a security does not pass the price validation test, the Exchange may select different price bands before recommencing the process to release the security for trading. *See id.*

[58] *See id.*

[59] *See* Nasdaq Listing Rule 5005(a)(23) and (45) for the definitions of ''Market Value'' and ''Unrestricted Publicly Held Shares,'' respectively.

[60] *See* Nasdaq Listing Rule 5315(f)(2).

[61] *See* Nasdaq Listing Rule IM–5315–2. The Exchange will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price. *See id.*

[62] *See* Amended Notice, *supra* note 11, 87 FR at 1801.

[63] *See id.*

1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[64] The Exchange also proposes to amend Nasdaq Listing Rule IM–5315–2 to specify that a company offering securities for sale in connection with a Direct Listing with a Capital Raise must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a), and that securities qualified for listing under Nasdaq Listing Rule IM–5315–2 must satisfy the additional requirements of Nasdaq Rule 4120(c)(9)(B).[65]

Finally, the Exchange has proposed to amend Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening auction to price as much as 20% below the lowest price of the disclosed price range.[66] Specifically, the Exchange proposes changes to Nasdaq Rules 4753(a)(3)(A) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator,[67] and to the calculation of the price at which the Nasdaq Halt Cross will execute, for a Direct Listing with a Capital Raise. Under these rules currently, where there are multiple prices that would satisfy the conditions for determining the price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the disclosed price range. The Exchange states that, to conform these rules to the proposed modification of the price range within which the opening auction would proceed, the Exchange proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the price closest to the price that is 20% below the lowest price of the disclosed price range.[68]

II. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Exchange Act,[69] the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to such organization.[70] The Commission shall disapprove a proposed rule change if it does not make such a finding.[71] The Commission's Rules of Practice, under Rule 700(b)(3), state that the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder . . . is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.'' [72]

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,[73] and any failure of the self-regulatory organization 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 Exchange Act and the applicable rules and regulations.[74] Moreover, ''unquestioning reliance'' on a self-regulatory organization's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[75]

For the reasons discussed below, the Commission is disapproving the proposed rule change because the information before the Commission is insufficient to support a finding that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission concludes that the Exchange has not met its burden to demonstrate that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, and in particular the requirements that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[76]

The Exchange proposes to modify its rules concerning pricing restrictions for the opening auction on the first day of trading for a Direct Listing with a Capital Raise. Instead of imposing the Pricing Range Limitation, which limits the price of the opening transaction to the price range disclosed in the issuer's effective registration statement, the proposal would allow the opening auction to proceed at a price up to 20% above or below the disclosed price range, or at a price more than 20% above the disclosed price range if certain additional conditions are met.

The Exchange states that it believes that its proposal to modify the Pricing Range Limitation is consistent with the protection of investors and argues that the proposal is similar to the pricing flexibility that is permitted for a firm commitment underwritten IPO.[77] However, in the context of a firm

[64] *See id.* at 1801–02 (citing Nasdaq Listing Rules 5315(e)(1) and (2) and 5315(f)(1)).

[65] *See* proposed Nasdaq Listing Rule IM–5315–2.

[66] *See* proposed Nasdaq Rules 4753(a)(3)(A)(iv)c. and 4753(b)(2)(D)(iii).

[67] *See* Nasdaq Rule 4753(a)(3) for a description of the ''Order Imbalance Indicator.''

[68] *See* Amended Notice, *supra* note 11, 87 FR at 1802.

[69] *See* 15 U.S.C. 78s(b)(2)(C).

[70] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[71] *See* 15 U.S.C. 78s(b)(2)(C)(ii); and *see also* 17 CFR 201.700(b)(3).

[72] 17 CFR 201.700(b)(3).

[73] *See id.*

[74] *See id.*

[75] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[76] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* 2021 Order, *supra* note 13, 86 FR at 28172 n.47; Securities Exchange Act Release Nos. 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* 2021 Order, *supra* note 13, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[77] *See* Amended Notice, *supra* note 11, 87 FR at 1802.

commitment underwritten IPO, the IPO price is determined prior to the time of sale to the underwriters and initial investors, which takes place in advance of the opening transaction on the Exchange. Accordingly, issuers and underwriters have the ability to provide investors with any necessary additional disclosures prior to completing the offering, including those that are dependent on the price of the offering, and to delay the offering if necessary to provide any such disclosures. In contrast, in the context of a Direct Listing with a Capital Raise, the IPO price is the opening auction price on the Exchange, so that the IPO price and proceeds to the issuer are not known by the issuer and market participants until the securities are sold to investors in the opening transaction on the Exchange. The Exchange's current rules for a Direct Listing with a Capital Raise require it to postpone and reschedule the offering if the opening auction price does not fall within the disclosed price range, so that issuers are able to update any disclosures if necessary before proceeding with an offering outside of the disclosed price range. However, as discussed below, the Exchange's proposal to expand Direct Listings with a Capital Raise would not ensure, in all cases, that issuers conducting a Direct Listing with a Capital Raise would have an opportunity to convey additional material information to investors, if needed, prior to the time of sale.

As discussed above, in cases where the opening auction price will be more than 20% above the high end of the disclosed price range, an issuer would have to have previously certified to the Exchange and publicly disclosed, prior to the beginning of the Display Only Period,[78] that it does not expect such price to materially change the issuer's previous disclosure in its effective registration statement. In such cases, when the opening auction price will be more than 20% above the high end of the disclosed price range, the issuer would then need to confirm to the Exchange again, during the Post-Pricing Period, that no additional disclosures are required under the federal securities laws based on the actual price calculated in the auction. If the issuer could not provide the required confirmation, the Exchange would postpone and reschedule the offering.

However, the Exchange does not propose to apply these additional protections to a Direct Listing with a Capital Raise where the opening auction price will be outside of the disclosed price range, but up to 20% above the high end or 20% below the low end of such disclosed price range. In these cases, the Exchange has not proposed any mechanism by which an issuer or the Exchange could postpone or reschedule the offering, even if the disclosures included in the registration statement are not based on an opening auction price that is outside the disclosed price range.[79] The Exchange argues that under its proposal an issuer in a Direct Listing with a Capital Raise would have the same ability as an issuer in a firm commitment underwritten IPO to delay an offering at any time.[80] Under Nasdaq's proposal, however, should concerns arise relating to the adequacy of the disclosure for an offering that prices within 20% of the disclosed price range, the Nasdaq procedures would not give the issuer the option to halt or delay the offering once the issuer submits its order. If the opening auction price would be up to 20% above the high end or 20% below the low end of the disclosed price range and the conditions in proposed Nasdaq Rule 4120(c)(9)(B)(vii)(a) and (b) and the Price Volatility Constraint are met, the opening auction would proceed.[81] Accordingly, the Commission does not believe that the proposal adequately addresses how an issuer would be able to disclose any additional material information related to the final offering price prior to the time of sale in a Direct Listing with a Capital Raise where the actual price calculated in the opening auction is higher or lower than, but no more than 20% outside of, the disclosed price range.[82] In these cases, the inability of an issuer to provide potentially material disclosures to investors in a timely manner prior to the sale of securities continues to raise investor protection concerns under Section 6(b)(5) of the Exchange Act.[83] Therefore, the Exchange has not met its burden to demonstrate that its proposal is consistent with the Exchange Act.

Similarly, in cases where the opening auction price will be more than 20% above the high end of the disclosed price range, the issuer would have to have included in its registration statement a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering exceeded the amount assumed in the disclosed price range. The Exchange states that requiring this sensitivity analysis is designed to protect investors because it allows investors to see how changes in the share price ripple through critical elements of the companies' disclosure.[84] However, this sensitivity analysis is not required under the Exchange's proposal in cases where the actual price calculated in the opening auction for a Direct Listing with a Capital Raise is higher or lower than, but no more than 20% outside of, the disclosed price range. This could result in an offering proceeding without investors having the opportunity to receive additional material information, such as a sensitivity analysis, in these cases. As noted above, the Commission believes this could raise investor protection concerns under Section 6(b)(5) of the Exchange Act.

In addition, the Exchange proposes to establish a Price Volatility Constraint, which would require that the Current

[78] Starting at the beginning of the Display Only Period, the Exchange would begin disseminating the Order Imbalance Indicator, which includes the Current Reference Price and other order information, every second. *See* proposed Nasdaq Rule 4120(c)(9)(B)(iv).

[79] Registration statements for initial public offerings typically provide disclosure based on an assumed offering price equal to the mid-point of the disclosed price range. They may or may not contain additional information explaining how the disclosure would change, including how the issuer's plans and financial condition would be affected, given specified changes in the assumed offering price. Moreover, the proposed Nasdaq rule would impose no such obligation on offerings that price up to 20% above the high end or 20% below the low end of the disclosed price range. As a result, if the opening auction price is substantially below the low end of the disclosed price range, depending on what information the issuer had provided prior to effectiveness of the registration statement, the issuer may need to provide additional disclosure relating to, among other things, changes in the planned use of offering proceeds, liquidity, or material risk factors.

[80] *See* Letter from Nikolai Utochkin, Counsel, Listing and Governance, Nasdaq (December 21, 2021), at 8 (''Nasdaq Letter'').

[81] *See* proposed Nasdaq Rule 4120(c)(9)(B)(viii) (stating ''. . . Nasdaq shall postpone and reschedule the pricing of the security only if the conditions in paragraphs (vii) a. and b., above, are not met.'').

[82] One commenter opposing the proposal raises concerns about the potential absence of material information concerning the final offering price prior to the time of the sale of shares in a Direct Listing with a Capital Raise. *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (October 21, 2021), at 2 (''CII Letter''). This commenter states that its sensitivity to this lack of disclosure in the Exchange proposal is heightened by its broader concerns about the loss of investor protections relating to direct listings generally, including the difficulties of investors in bringing claims under Section 11 of the Securities Act for material misstatements or omissions in direct listing registration statements. The commenter argues that investors in direct listings, including Direct Listings with a Capital Raise, are likely to continue to have ''fewer legal rights than investors in a traditional initial public offering.'' *See id.* at 4. The Exchange has not responded to this commenter's concerns, including the concern relating to ''tracing'' share purchases for purposes of Section 11 claims, in its proposal.

[83] *See* OIP, *supra* note 8.

[84] *See* Nasdaq Letter, at 3. *See also id.* at 7–8 (describing the requirements that would apply to an offering that prices more than 20% above the high end of the disclosed price range).

Reference Price not deviate by 10% or more from any Current Reference Price in the previous 10 minutes, as a condition to the opening auction in a Direct Listing with a Capital Raise.[85] Specifically, the Exchange's proposal provides that ''[t]he Pre-Launch Period shall continue until the Price Volatility Constraint is satisfied.'' [86] The Exchange also proposes to disseminate information about whether the Price Volatility Constraint has been satisfied, which, according to the Exchange, ''will indicate whether the security is ready to trade,'' and ''will provide investors with notice that the Cross nears execution.'' [87] Once the Price Volatility Constraint is satisfied, however, there are additional conditions that must be met before the opening cross will occur and in the intervening period the expected opening auction price may change because orders can continue to be entered and cancelled.[88] Specifically, the Exchange, in consultation with the financial advisor to the issuer, must make the determination that the security is ready to trade, and several additional conditions specified in proposed Nasdaq Rule 4120(c)(9)(B)(vii) and (viii) must be met, including the potential initiation and conclusion of a Post-Pricing Period.[89] Thus, it would appear that there could be a substantial price change during the period of time between the Exchange's dissemination of the fact that the Price Volatility Constraint has been satisfied and the actual execution of the opening cross for a Direct Listing with a Capital Raise. In such event, investors could be misled that the opening cross ''nears execution'' and that the disseminated Current Reference Price will likely be close to the opening auction price when, in fact, the auction may not occur for a considerable time and the opening auction price may differ substantially.

The Exchange has not addressed this potential discrepancy between the stated purpose of the proposed dissemination of the Price Volatility Constraint, and its potential application in practice, or explained how this result would be consistent with the protection of investors, the public interest, or the other requirements of Section 6(b)(5) of the Exchange Act.

As stated above, 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 self-regulatory organization that proposed the rule change.[90] For the foregoing reasons, the Exchange has not met its burden to demonstrate that its proposal is consistent with the Exchange Act. In particular, the Exchange has not adequately demonstrated that its proposal to allow a Direct Listing with a Capital Raise to proceed at an opening auction price that falls outside of the disclosed price range is consistent with investor protection, the public interest, and other relevant provisions of Section 6(b)(5) of the Exchange Act. [91] Accordingly, for the reasons set forth above, the Commission must disapprove the proposed rule change, as modified by Amendment No. 2, because the Exchange has not met its burden to demonstrate that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[92]

III. Conclusion

The Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,[93] that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASDAQ–2021–045), as modified by Amendment No. 2, be, and hereby is, *Disapproved.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[94]

Eduardo Aleman,

Assistant Secretary.

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[85] *See supra* notes 37–39 and accompanying text.

[86] Proposed Nasdaq Rule 4120(c)(9)(B)(vii).

[87] Amended Notice, *supra* note 11, 87 FR at 1800–01. *See* proposed Nasdaq Rule 4120(c)(9)(B)(v) stating that the Price Volatility Constraint ''indicates that the security may be ready to trade.'' *See also* Nasdaq Letter, at 7 (''Then, Nasdaq will publicly indicate when the Price Volatility Constraint has been met, thus providing investors with real time information that the price discovery process nears completion and the security is ready to trade shortly.'')

[88] The Exchange's proposal states that investors could enter additional orders or cancel existing orders throughout the pre-opening process until the actual opening auction price is calculated; therefore, the Current Reference Price may change throughout this time period. *See* proposed Nasdaq Rule 4120(c)(9)(B)(v) and (viii)(b).

[89] These conditions also include a determination that the issuer's CDL Order will be executed in full in the Nasdaq Halt Cross, a price validation test, and satisfaction of the pricing conditions. *See* proposed Nasdaq Rule 4120(c)(9)(B)(vii).

[90] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[91] 15 U.S.C. 78f(b)(5).

[92] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). According to the Exchange, the proposal would give issuers additional flexibility in becoming a public company, and in that way promote competition among service providers, such as underwriters and other advisers, to such companies. *See* Amended Notice, *supra* note 11, 87 FR at 1804. One commenter expresses its belief that the ability for companies to raise primary capital in a direct listing provides companies with additional choice and flexibility as they consider alternatives to going public and, therefore, helps facilitate capital formation. *See* Letter from Evan Damast, Global Head of Equity and Fixed Income Syndicate, Morgan Stanley (July 21, 2021); Letter from Evan Damast, Global Head of Equity and Fixed Income Syndicate, Morgan Stanley (February 1, 2022). Another commenter states that adding a primary capital raise to a direct listing would advance the efficiency and openness of the U.S. capital markets and solve a conflict of interest problem. *See* Letter from Bill Gurley, General Partner, Benchmark (February 2, 2022). *See also* Letter from Ran D. Ben-Tzur and Jennifer J. Hitchcock, Fenwick & West LLP (February 1, 2022) (stating that the proposal would mitigate issuers' reluctance to use a Direct Listing with a Capital Raise because traditional IPOs are not subject to similar price range limitations); Letter from Barry McCarthy (February 1, 2022) (stating that Direct Listings with a Capital Raise are the next logical evolution of a direct listing, but will not work with the current price range constraints). Another commenter states that it believes the proposal would stimulate a vibrant ecosystem of data and analytics and fintech companies to further refine IPO pricing accuracy and broaden investor participation, thus improving capital intermediation for U.S. markets. *See* Letter from Burke Dempsey, EVP Head of Investment Banking, Wedbush Securities Inc. (August 9, 2021). For the reasons discussed throughout, however, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

[93] 15 U.S.C. 78s(b)(2).

[94] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34516; File No. 812–15282]

Northern Lights Fund Trust IV, et al.

February 24, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; and (c) certain affiliated

persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

APPLICANTS: Northern Lights Fund Trust IV, First Manhattan Co. and Northern Lights Distributors, LLC.

FILING DATES: The application was filed on November 10, 2021, and amended on February 4, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Wendy Wang, Northern Lights Fund Trust IV, *wwang@ultimusfundsolutions.com;* Benjamin Clammer, First Manhattan Co., *bclammer@firstmanhattan.com;* Kevin Guerette, Northern Lights Distributors, LLC, *kguerette@ultimusfundsolutions.com;* JoAnn M. Strasser, Esq. and Bibb L. Strench, Esq., Thompson Hine LLP, *JoAnn.Strasser@ThompsonHine.com, Bibb.Strench@ThompsonHine.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For applicants' representations, legal analysis, and conditions, please refer to applicants' amended application, dated February 4, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04312 Filed 3–1–22; 8:45 am]

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[1] Precidian ETFs Trust, *et al.,* Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94307; File No. S7–24–89]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

February 24, 2022.

I. Introduction

On November 5, 2021,[1] certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'')[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposal (the ''Proposed Amendment'') to amend the Nasdaq/UTP Plan.[5] The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.[6]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Summary of the Proposed Amendment[8]

Under the Proposed Amendment, the Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rule (''MDI Rule'').[9] The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rule.[10]

The Participants propose a fee structure for the following three categories of consolidated equity market data, which collectively constitute the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:[11]

(1) Level 1 Service, which would include Top of Book Quotations, Last Sale Price Information, and odd-lot

[1] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021) (''Cover Letter'').

[2] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] The Proposed Amendment was approved and executed by more than the Plan's required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the UTP Plan. The participants that approved and executed the amendment (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.

[6] *See* Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (''Notice''). Comments received in response to the Notice are available at *https://www.sec.gov/comments/s7-24-89/s72489.shtml.*

[7] 17 CFR 242.608(b)(2)(i).

[8] The full text of the Proposed Amendment appears as Attachment A to the Notice. *See* Notice, *supra* note 6, 86 FR 67566–68.

[9] *See* Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (''MDI Rule Release'').

[10] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021).

[11] 17 CFR 242.600(b)(26).

information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that the fees for Level 1 Service would remain unchanged and that Level 1 Service would continue to include all information that subscribers currently receive and would add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).[12]

Professional and Nonprofessional Fee Structure

For each of the three categories of data described above, the Participants propose a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Service, the Participants do not propose to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth-of-book data, Professional Subscribers would pay $99.00 per device per month, and Nonprofessional Subscribers would pay $4.00 per subscriber per device per month. The Participants do not propose at this time to offer per-quote packet charges or enterprise rates for the use of depth-of-book data by either Professional Subscribers or Nonprofessional Subscribers.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device per month.

Non-Display Use Fees

The Participants propose Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Service, the Participants do not propose to change the Non-Display Use fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

With respect to non-display use of depth-of-book data, subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use.

With respect to non-display auction information, subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use.

Access Fees

Finally, in addition to the charges described above, the Participants propose to charge Access Fees to all subscribers for the use of the three categories of data: (1) Level 1 Service; (2) depth-of-book data; and (3) auction information.

With respect to Level 1 Service, the Participants do not propose to change the Access Fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

With respect to depth-of-book data, subscribers would pay a monthly Access Fee of $9,850.00.

With respect to auction information, subscribers would pay a monthly Access Fee of $985.00 per Network.

Clarifications Related to Expanded Content

The Participants also propose to add clarifying language to the fees for UTP services regarding the applicability of various fees to the expanded market data content required by the MDI Rule.

First, the Participants propose to clarify that the Per Query Fee will not apply to the expanded content, and will only be available for the receipt and use of Level 1 Service. The Participants state that, under the current Price List, the Per Query Fee serves as an alternative fee schedule to the normally applied Professional and Nonprofessional Subscriber Charges, and, further, that the proposed changes are designed to clarify that Per Query Fee is only available with respect to the use of Level 1 Service, and that the fees for the use of depth-of-book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. The Participants state that this proposed amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Participants propose to clarify that the existing Redistribution Fees would apply to all three categories of core data (*i.e.,* Level 1, depth-of-book, and auction information), including any subset thereof. According to the Participants, Redistribution Fees are currently charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants do not propose to change the amount of the Redistribution Fees themselves.

Fourth, the Participants propose that the existing Redistribution Fees would be charged to competing consolidators. The Participants argue (1) that the comparison the Commission made in the MDI Rule Release between self-aggregators (which would not pay Redistribution Fees) and competing consolidators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory; and (2) that the Participants do not believe that the Commission's comparison is consistent with the current long-standing practice that redistribution fees are charged to any entity that distributes data externally.[13] The Participants state

[12] The Participants state that they propose to price subsets of data that constitute core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants state that they understand that certain data subscribers may not wish to add depth-of-book data or auction information, or may want to add only depth-of-book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants state that they expect that competing consolidators would purchase all core data.

[13] The Participants state that the current exclusive securities information processor (''SIP'') is not charged a Redistribution Fee. The Participants state, however, that unlike competing consolidators, the processor has been retained by the UTP Plan to serve as an exclusive SIP, is subject to oversight by both the UTP Plan and the Commission, and neither pays for the data nor engages with data subscriber customers. The Participants state that, by contrast, under the competing consolidator model, the UTP Plan would have no role in either oversight of or determining which entities choose to be a competing consolidator, a competing consolidator would need to purchase consolidated market data just as any other vendor would, and competing consolidators would be responsible for competing for data subscriber clients. Accordingly, the Participants argue that competing consolidators

that a self-aggregator, by definition, would not be distributing data externally and therefore would not be subject to such fees, which, according to the Participants, is consistent with current practice that a subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

The Participants state that the more appropriate comparison would be between competing consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. The Participants state that vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers, and that it would be unreasonably discriminatory for competing consolidators—which would be competing with downstream market data vendors for the same data subscriber customers—to not be charged a Redistribution Fee for exactly the same activity. The Participants argue that, consequently, it would be unreasonably discriminatory and would impose a burden on competition to not charge competing consolidators the Redistribution Fee.[14]

Third, the Participants state that the UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for $250.00 per month. The Participants propose adding a statement that depth-of-book data and auction information may not be redistributed on a delayed basis.

Finally, the Participants propose to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants propose updating various fee descriptions to either add or remove a reference to UTP Level 1 Service. Additionally, the Participants state that, while FINRA OTC Data will not be provided to competing consolidators, it is still being provided to the UTP Processor for inclusion in the consolidated market data made available by the UTP Processor. Accordingly, the Participants propose adding clarifying language to make clear that UTP Level 1 Service obtained from the Processor will include FINRA OTC Data but will not include odd-lot information.

III. Summary of Comments

The Commission has received 16 comment letters on the Proposed Amendment.[15] Fourteen commenters object to the Proposed Amendment,[16] and two commenters support the Proposed Amendment.[17]

A. Comments Regarding the Methodology Used To Justify the Proposed Fees

Some commenters oppose the Proposed Amendment, arguing that the proposed fees are based on a flawed methodology that, inconsistent with the MDI Rule Release, fails to provide a cost-based justification.[18] These commenters state that the proposal should bear a reasonable relationship to the cost of producing the market data, which, they argue, is the primary basis the Commission has identified for justifying the prices for core data fees.[19]

Some commenters also state that the methodology used has resulted in proposed fees that are unreasonably high.[20] In making this argument, some commenters object to using the current prices for the exchanges' proprietary data products as the basis for calculating the proposed core data fees,[21] stating that such a method is inconsistent with the MDI Rule's goal of expanding access to consolidated data[22] and with statements in the MDI Rule Release that the proposed fees should bear a reasonable relationship to the cost of producing the data.[23]

Some commenters also state that they disagree with the Participants' views in the proposal that a cost-based justification is not required because the Act does not require a showing of costs and that cost analysis has not been provided in past equity market data plan proposals.[24] These commenters state that the Commission has stated that a reasonable relation to cost is a

would be more akin to vendors than the current exclusive SIPs. The Participants state that if any entity that is currently an exclusive SIP chooses to register as a competing consolidator, such entity would be subject to the Redistribution Fee.

[14] The Participants argue that it would be more appropriate to compare competing consolidators and self-aggregators with respect to the fees charged for *receipt* and use of market data from the Participants and to address the fees for the usage of consolidated market data based on their actual usage, which, the Participants argue, is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. The Participants state that, for instance, Participants have proposed to charge a data access fee to competing consolidators that would be the same fee to self-aggregators.

[15] *See* Letters to Vanessa Countryman, Secretary, Commission from Hope M. Jarkowski, General Counsel, NYSE Group, Inc. (Jan. 22, 2022) (''NYSE Letter''); Christopher Solgan, Senior Counsel, MIAX Exchange Group (Jan.12, 2022) (''MIAX Letter''); Emil Framnes and Simon Emrich, Norges Bank Investment Management (Jan. 5, 2022) (''NBIM Letter''); James Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University (Dec. 21, 2021) (''Angel Letter''); Luc Burgun, President and CEO, NovaSparks S.A.S. (Dec. 17, 2021) (''NovaSparks Letter''); Joe Wald, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group, BMO Capital Markets and Ray Ross, Managing Director, Co-Head of Electronic Trading, BMO Capital Markets Group (Dec. 17, 2021) (''BMO Letter''); Erika Moore, Vice President and Corporate Secretary, Nasdaq Stock Market LLC (Dec. 17, 2021) (''Nasdaq Letter''); John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (Dec. 17, 2021) (''IEX Letter''); Ellen Greene, Managing Director, Equity & Options Market Structure, Securities Industry and Financial Markets Association and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Dec. 17, 2021) (''SIFMA Letter''); Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority, Inc. (Dec. 17, 2021) (''FINRA Letter''); Patrick Flannery, Chief Executive Officer, MayStreet (Dec. 17, 2021) (''MayStreet Letter''); Hubert De Jesus, Managing Director, Global Head of Market Structure and Electronic Trading, BlackRock and Samantha DeZur, Director, Global Public Policy, BlackRock (Dec. 16, 2021) (''BlackRock Letter''); Jonathan Hill, CEO, Cutler Group, LP Anand Prakash, CTO, Cutler Group, LP Nader Sharabati, CFO, Cutler Group, LP and Doug Patterson, CCO, Cutler Group, LP *(Dec. 16, 2021)* (''Cutler Letter''); Quinton Pike, CEO, Polygon.io, Inc. (Nov. 30, 2021) (''Polygon.io Letter''); Allison Bishop, President, Proof Services LLC (Nov. 22, 2021) (''Proof Letter''); Adrian Griffiths, Head of Market Structure, MEMX LLC, (Nov. 8, 2021) (''MEMX Letter'').

[16] *See* MIAX Letter, *supra* note 15; NBIM Letter, *supra* note 15; Angel Letter, *supra* note 15; NovaSparks Letter, *supra* note 15; BMO Capital Letter, *supra* note 15; IEX Letter, *supra* note 15; SIFMA Letter, *supra* note 15; FINRA Letter, *supra* note 15; MayStreet Letter, *supra* note 15; BlackRock Letter, *supra* note 15; Cutler Letter, *supra* note 15; Polygon.io Letter, *supra* note 15; Proof Letter, *supra* note 15; MEMX Letter, *supra* note 15.

[17] *See* Nasdaq Letter, *supra* note 15; NYSE Letter, *supra* note 15.

[18] *See* MIAX Letter, *supra* note 15, at 3; IEX Letter, supra note 15, at 2–3. *See also* BMO Letter, *supra* note 15, at 2–3; SIFMA Letter, *supra* note 15, at 4–5 (noting that the fees charged by monopolistic providers, such as exclusive SIPs, to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2; Proof Letter, *supra* note 15, at 2, 3; MEMX Letter, *supra* note 15, at 18.

[19] *See* IEX Letter, *supra* note 15, at 1, 2–3 (stating that the proposal fails to establish that the fees for the data content underlying consolidated market data meet the statutory standards of being fair, reasonable, and not unreasonably discriminatory); MIAX Letter, *supra* note 15, at 3. *See also* BMO Letter, *supra* note 15, at 2–3; SIFMA Letter, *supra* note 15, at 4–5 (noting that the fees charged by monopolistic providers, such as exclusive SIPs, need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low); MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2; Proof Letter, *supra* note 15, at 2, 3; MEMX Letter, *supra* note 15, at 18.

[20] *See* MIAX Letter, *supra* note 15, at 3; MayStreet Letter, *supra* note 15, at 6; BlackRock Letter, *supra* note 15, at 2, 4–5; IEX Letter, *supra* note 15, at 4; Proof Letter, *supra* note 15, at 3; MEMX Letter, *supra* note 15, at 8, 11–12.

[21] *See* MIAX Letter, *supra* note 15, at 4; SIFMA Letter, *supra* note 15, at 4, 5; IEX Letter, *supra* note 15, at 4.

[22] *See* MIAX Letter, *supra* note 15, at 4.

[23] *See* MIAX Letter, *supra* note 15, at 3; SIFMA Letter, *supra* note 15, at 4, 5; IEX Letter, *supra* note 15, at 1, 2–3.

[24] *See* MIAX Letter, *supra* note 15, at 3; SIFMA Letter, *supra* note 15, at 5;

primary basis for justifying core data fees.[25] One commenter states that specific information, including quantitative information, should be provided to support the Participants' claims that the proposed fee is fair and reasonable because it will permit the recovery of SRO costs or will not result in excessive pricing or profits.[26] Additionally, some commenters state that they disagree with the Participants' statement in the proposal that the Plan's Operating Committee ''has no knowledge of any costs associated with consolidated market data,'' stating that Participants know how much it costs to collect and disseminate market data because they already perform this function, including in connection with proprietary feeds.[27]

One commenter states that a demonstration of costs is not required because neither the Exchange Act nor Commission rules requires that market data fees to be supported by a showing of costs.[28] The commenter stated that the Commission's standard for evaluating consolidated market data fees has not required a showing of the relationship between the proposed fees and the cost of producing the data, as illustrated by past equity market data plan proposals for consolidated market data fees which the commenter states were not justified on the basis of cost.[29]

This commenter argues that it is not clear how the Plan could support the fee proposals based on costs because the Operating Committee plays no role in the creation or dissemination of core data under amended Rule 603(b), and thus has no information about how each exchange would generate core data under that rule.[30] The commenter states that, in its view, it remains impossible to separate the costs of producing market data from other costs of operating an exchange.[31]

Another commenter opposes the use of cost as a basis for setting the proposed fees.[32] This commenter dismisses other commenters' suggestions that fees should be based on costs, rather than value, because, according to the commenter, the Commission has not offered guidance with respect to such a cost-based ratemaking system,[33] and because any cost allocation between joint products would therefore be unworkable, inherently arbitrary, and inconsistent with the Congressional mandate that the Commission rely on competition whenever possible in meeting its regulatory responsibilities.[34] The commenter states that the proposed fees have been tested by competition and that ''Commission staff have indicated that they would look at factors beyond the competitive environment, such as cost, only if a 'proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.' ''[35]

Some commenters oppose the use of the value-based methodology used to determine the fees under the Proposed Amendment.[36] One commenter states that if the objective is to have the SIPs provide a service that is more affordable and accessible than the data products offered by individual exchanges, then ''value to subscribers'' should not be sole determinant of SIP fees because the current fees for exchange proprietary data products are not a reasonable gauge of the value of core data offered under the Plan.[37] One commenter states that basing the proposed pricing of the Plans' fees on the proprietary feeds pricing does not seem appropriate because exchange proprietary data feeds are complements to consolidated market data feeds for latency-sensitive market participants;[38] less-latency sensitive market participants find consolidated market data more useful than the propriety data feeds;[39] and latency-sensitive market participants will not view consolidated market data under the Plans to be a credible substitute for the proprietary data feeds even after the MDI Rule reforms are implemented.[40] Another commenter states that basing the proposed fees on value instead of cost does not work because the mandate under the Exchange Act is to price SIP data at levels that maximize its availability.[41]

Two commenters argue that the proposed fees are fair and reasonable and not unreasonably discriminatory because they are reasonably related to the value that subscribers gain from the data, and achieve the Commission's objective in Regulation NMS that prices for consolidated market data be set by market forces.[42] One commenter argues that the pricing for exchange proprietary data feeds, including the depth-of-book data, top-of-book data, and auction information on which the proposed fees are based, is constrained by competitive forces, in that they have a history of being constrained by direct competition and by platform competition among the exchanges.[43] This commenter states that the pricing for exchange proprietary data feeds is constrained by the highly competitive markets for exchange trading and exchange market data.[44] It states that the proposed fees meet the Commission's objective for market forces to determine the overall level of fees.[45]

[25] *See* IEX Letter, *supra* note 15, at 1, 2–3; SIFMA Letter, *supra* note 15, at 5; MIAX Letter, *supra* note 15, at 3 (noting that the vast majority of such equity market data plan fees were adopted prior to issuance of the Commission's staff fee guidance, and multiple SROs have more recently included cost based analysis when proposing fees for a market data product).

[26] *See* MIAX Letter, *supra* note 15, at 3.

[27] *See* SIFMA Letter, *supra* note 15, at 5; MIAX Letter, *supra* note 15, at 3; MayStreet Letter, *supra* note 15, at 6.

[28] *See* NYSE Letter, *supra* note 15, at 3 (stating that the legislative history of the 1975 amendments to the Exchange Act, and particularly Section 11A, reflects that Congress's principal concern was promoting competition between exchanges, not regulating market data pricing; and that economic studies have demonstrated that separating out the costs of producing market data from the other costs of operating an SRO is an impossible task that would enmesh the Commission in a continuous ratemaking process that would produce arbitrary results).

[29] *See id.* at 3–4.

[30] *See id.* at 4.

[31] *See id.*

[32] *See* Nasdaq Letter, *supra* note 15, at 3.

[33] *See id.*

[34] *See id.*

[35] *See id.* at 5–6 (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*). The Staff Guidance on SRO Rule Filings Relating to Fees in fact states: ''If a Fee Filing proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces, the SRO must provide a substantial basis, other than competitive forces, demonstrating that the fee is consistent with the Exchange Act. One such basis may be the production of related revenue and cost data, as discussed further below.'' *See* ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[36] *See* Proof Letter, *supra* note 15; NBIM Letter, *supra* note 15; MayStreet Letter, *supra* note 15.

[37] *See* Proof Letter, *supra* note 15, at 3.

[38] *See* NBIM Letter, *supra* note 15, at 1–2.

[39] *See id.* at 2.

[40] *See id.* at 2.

[41] *See* MayStreet Letter, *supra* note 15, at 6.

[42] *See* NYSE Letter, *supra* note 15, at 5; Nasdaq Letter, *supra* note 15, at 5.

[43] *See* NYSE Letter, *supra* note 15, at 5.

[44] *See id.* The commenter further argues that exchanges compete against each other as platforms, and that, as such, no exchange can raise its prices to supracompetitive levels on one side of the platform, such as market data, without losing sales on the other, such as trading volume. The commenter argues that given this inter-exchange platform competition, the exchanges' filed prices for depth-of-book data and auction information are constrained by market forces. *See id.* at 6–7.

[45] *See id.* at 5. The commenter stated that by applying that established ratio to the current prices for consolidated top-of-book data, the fee proposals thus reflect the market forces that drive the pricing of depth-of-book information in relation to top-of book information and the value that the data has to market participants. *Id.* The ratio between such filed proprietary depth-of-book fees and proprietary top-of-book data therefore provides the Commission with a benchmark for evaluating the proposed fees, which NYSE argues are fair, reasonable, and not unfairly discriminatory because they are based on this ratio, which is reflective of market forces. *See id.* at 7.

This commenter also argues that basing fees on the value of the underlying data is the fairest and most economically efficient method for setting fees because setting fees according to the value of the data leads to optimal consumption: Fees that are too low do not allow for producers to remain profitable, while fees that are too high lead to underutilization.[46] The commenter states that NMS Plans have historically used value as a fair and efficient basis for setting fees.[47] The commenter argues that the best basis for determining the value of core data are the fees currently charged for proprietary data fees, which, according to the commenter, have been ''tested by competitive forces'' and therefore provide a good starting point for estimating the value of new core data and for setting fees at efficient levels.[48] The commenter argues that the value-based methodology provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[49] The commenter states that exchanges cannot overprice the total prices of their services without potentially losing order flow and damaging its overall ability to compete.[50]According to this commenter, exchanges that produce more valuable market data generally charge higher fees, and those with less valuable data charge lower fees,[51] so fees vary according to the underlying value of the data, as measured by the liquidity available at the exchange.[52]

The commenter argues that the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably discriminatory.[53] The commenter states that Commission staff has indicated that they would look at factors beyond the competitive environment, such as cost, only if a proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.[54] The commenter argues that, because they are tested by market competition, proprietary data fees provide good and indicative starting point for estimating the value of new core data and setting fees at their efficient level.[55] This, according to the commenter, provides a substantial basis for showing that current proprietary fees—and, by extension, the proposed fees for new core data—are equitable, fair, reasonable, and not unreasonably discriminatory.[56]

Some commenters object to the way in which the Participants used the fees of proprietary depth-of-book products to calculate a ratio (or multiplier) between those fees and the fees for proprietary top-of-book products and then multiplied existing SIP core top-of-book data fees by that multiplier to calculate the proposed depth-of-book fees for expanded core data under the MDI Rule.[57] One commenter argues that the approach adopted is arbitrary because it presupposes that the fees exchanges charge for their proprietary market data are fair and reasonable.[58] One commenter states that calculating the proposed fee levels in this manner—based on prices charged by the exchanges for their existing market data product—is not the right starting point for setting the proposed fees and inconsistent with the MDI Rule's goal of expanding access to consolidated data.[59] One commenter states that that the exchanges' ''platform competition'' argument that competition for order flow constrains pricing for market data does not demonstrate that the fees are reasonable and mentions studies it has submitted to the Commission in the past that bolster their argument.[60]

Some commenters argue that the methodology used to calculate the fees does not account for the transfer of costs from the SROs to market participants under the decentralized consolidation model.[61] One commenter states that, while the proposal leaves fees for existing core data elements unchanged, the profits and operating costs of the exclusive securities information processors should be deducted from these fees to reflect the new role of competing consolidators.[62]

B. Comments Regarding the Proposed Fees

1. General Comments

Some commenters state the methodology used to calculate the proposed fees resulted in fees that are too high.[63] Some commenters state that the proposed fees have not been shown to be fair and reasonable and not unreasonably discriminatory.[64] One commenter states that the proposed fees for the content underlying consolidated market data are too high whether a cost-basis or value-basis were used as a justification by the Participants.[65] This commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds, and that market participants are currently choosing the less expensive option of top-of-book proprietary feeds,[66] which, according to the commenter, indicates that Level 1 consolidated market data is not priced in accordance with its value to the market.[67] Another commenter challenges the methodology and compares the proposed fees to fees currently charged for proprietary data fees and the proposed user and access fees for consolidated market data under the proposal to the prices that a firm would pay to obtain that data from

[46] *See* Nasdaq Letter, *supra* note 15, at 2.

[47] *See id.*

[48] *See id.* at 2, 6.

[49] *See id.* at 6.

[50] *See id.* at 4.

[51] *See id.*

[52] *See id.*

[53] *See id.* at 5–6.

[54] *See id.* (citing to ''Staff Guidance on SRO Rule Filings Relating to Fees'' (May 19, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*).

[55] *See id.* at 6.

[56] *See id.*

[57] *See* MIAX Letter, *supra* note 15, at 4; SIFMA Letter, *supra* note 15, at 5.

[58] *See* SIFMA Letter, *supra* note 15, at 5.

[59] *See* MIAX Letter, *supra* note 15, at 4.

[60] *See* SIFMA Letter, *supra* note 15, at 5–6.

[61] *See* MEMX Letter, *supra* note 15, at 18; MIAX Letter, *supra* note 15, at 2; BlackRock Letter, *supra* note 15, at 2–3; Polygon.io Letter, *supra* note 15, at 1. On the other hand, one commenter stated that with respect to comments that the proposal should ''back out'' fees for the current Processors from the proposed fee structure, the MDI Rule requires the current Processors to continue operating for at least several more years, and that therefore, there are no savings to back out of any proposed fee structure at this time. *See* NYSE Letter, supra note 15, at 7.

[62] *See* BlackRock Letter, *supra* note 15, at 2, 3–4.

[63] *See* BlackRock Letter, *supra* note 15, at 1–5; FINRA Letter, *supra* note 15, at 7; MIAX Letter, *supra* note 15, at 2; Angel Letter, *supra* note 15, at 9; NovaSparks Letter, *supra* note 15, at 1; BMO Letter, *supra* note 15, at 2–3; IEX Letter, *supra* note 15, at 1, 5; SIFMA Letter, *supra* note 15, at 1, 4–5; IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12.

[64] *See* IEX Letter, *supra* note 15, 1, at 2–3; MIAX Letter, *supra* note 15, at 2; MEMX Letter, *supra* note 15, at 22; SIFMA Letter, *supra* note 15, at 4–5; BMO Letter, *supra* note 15, at 3; FINRA Letter, *supra* note 15, at 7; MayStreet Letter, *supra* note 15, at 4; BlackRock Letter, *supra* note 15, at 2, 6; Polygon.io Letter, *supra* note 15, at 2.

[65] *See* MayStreet Letter, *supra* note 15, at 6. This commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds, and that market participants are currently choosing the less expensive option of top-of-book proprietary feeds, which, according to the commenter, indicates that Level 1 consolidated market data is not priced in accordance with its value to the market. *See id.*

[66] *See* MayStreet Letter, *supra* note 15, at 6–7.

[67] *See id.* at 7. The commenter states that Level 1 data should be priced so as to make the content available at a price that is competitive to proprietary top-of-book offerings, and that the fact that the price levels are unchanged from the current SIP prices reflects a failure by the Participants to accurately assess the value of Level 1 data. The commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and adds that the Operating Committee should consider what price point would increase availability of depth-of-book information, rather than charging a multiplier of proprietary data feeds. *See id.*

proprietary data products that offer similar information.[68] This commenter believes that at any given price a subscriber would be better off subscribing to the proprietary data fees listed instead of purchasing consolidated market data from the SIPs given the additional information included on those feeds.[69] The commenter states that, because the proposed fees are generally more expensive than current proprietary data offering, the Proposed Amendments clearly fail the ''fair and reasonable'' test required by the Exchange Act.[70]

Some commenters state that the proposed fees would have an adverse impact on competition, and on competing consolidators in particular.[71] One commenter states that, even where the proposed fees are lower than the fees charged for comparable proprietary data, the fact that other fees are higher than proprietary offerings is likely to reduce incentives for competing consolidators to actually offer that data content to their customers.[72] Another commenter expresses concern that if the Proposed Amendment were approved the exchanges would entrench a high level of cost for market data that has no relation to their underlying expenses, is not subject to effective competitive forces, and serves as an formidable barrier to entry for newer firms.[73]

One commenter states that the Proposed Amendment conflates the prices that competing consolidators and self-aggregators pay the SROs for the underlying NMS information, and the prices that competing consolidators would charge for the consolidated data they generate.[74] This commenter believes the proposals do not make clear that the proposed fees are for the content underlying the consolidated market data, as opposed to the consolidated market data itself.[75] The commenter argues that the Participants confuse the content of consolidated market data and the consolidated market data itself,[76] and states that the Proposed Amendment sets prices at levels that the SIPs currently charge for consolidated market data.[77]

One commenter believes that any analysis of current SIP fees should include a discussion of what structural changes could be made to SIP fees to eliminate or reduce the incentives that firms have today to avoid providing SIP data to their customers.[78] One commenter believes that the current proposal will favor current market data vendors who already pay for these fees and have large customer bases, but will not necessarily use the most efficient data consolidation solutions.[79] This commenter believes that all of the equity market data plans should have a unified feed and price list because most end users today consume all of the plans' feeds.[80] Another commenter states it supports the proposed *a la carte* fee structure for the expanded elements of consolidated data because, in the commenter's view, market participants should be able to select from a variety of market data products and pay only for the content they consume.[81]

2. Fees for Top-of-Book Data

Some commenters believe that the proposed fees for Level 1 core data, which include expanded content to include odd-lot quotations, are too high.[82]

One commenter states that the proposed fees for top-of-book data should be substantially lower to allow competing consolidators to operate their business.[83] This commenter states that exchanges will no longer have to pay for the current processors and will not have the burden of maintaining custom feeds in specific formats since the proprietary data feeds would be used by the competing consolidators to distribute the new SIP market data.[84]

One commenter states that the net effect of the proposal is to make core data fees more expensive that proprietary data feeds, adding that it seems clear the purpose of the proposal is ''to protect existing proprietary market data fee revenues by making market data from competing consolidators prohibitively expensive and their business non-viable.''[85] Another commenter states that the cost of SIP data is too high relative to top-of-book proprietary feeds and that market participants are choosing the less expensive option of top-of-book proprietary feeds.[86] This commenter believes this indicates that Level 1 consolidated market data is not priced in accordance with its value to the market.[87] According to the commenter, Level 1 data should be priced as to make the content available at a price that is competitive to proprietary top-of-book offerings.[88] This commenter further states that the fact that the price levels are unchanged from the current SIP prices reflects a failure by the Participants to accurately assess the value of Level 1 data.[89] Another commenter opposes the proposal and asks the Commission disapprove it as it represents an overall increase in costs, including access fees, to end users as well as competing consolidators, thereby making market data less accessible and putting competing consolidators at a disadvantage.[90]

One commenter supports certain aspects of the proposal, including its *a la carte* fee structure, and the inclusion of odd-lot quotations free of charge.[91] Moreover, some commenters expressed support for the proposed inclusion of odd-lot information free of charge in the expanded Level 1 core data,[92] with one commenter stating that this would result in top-of-book information that is more comprehensive, which should, in turn, strengthen best execution and enhance transparency and price discovery.[93]

One commenter states that the proposed Level 1 core data fees should be adjusted to reflect the new role of competing consolidators.[94] The commenter states that the MDI Rule fundamentally alters the ecosystem for market data by transitioning from exclusive SIPs to competing consolidators and that the Commission intended that this change would unbundle the data fees for consolidated

[68] *See* MEMX Letter, *supra* note 15, at 6.

[69] *See id.* at 7.

[70] *See id.* at 8.

[71] *See* MIAX Letter, *supra* note 15, at 1, 3; 4; MEMX Letter, *supra* note 15, at 2, 9; 15–17, 21–22, 25; NBIM Letter, *supra* note 15, at 2; NovaSparks Letter, *supra* note 15, at 1; IEX Letter, *supra* note 15, at 5; SIFMA Letter, *supra* note 15, at 8; FINRA Letter, *supra* note 15, at 5; MayStreet Letter, *supra* note 15, at 5; BlackRock Letter, *supra* note 15, at 1–4; Polygon.io Letter, *supra* note 15, at 3; Proof Letter, *supra* note 15, at 3; Cutler Letter, *supra* note 15, at 1.

[72] *See* MEMX Letter, *supra* note 15, at 9. The commenter further argues that it is unlikely that there will be any demand for the new data elements included in consolidated market data at prices that exceed the fees charged for proprietary data feeds today. This, the commenter argues, would limit the potential customer base for competing consolidators and inappropriately impede the viability of competing consolidators under the infrastructure rule. *See* MEMX Letter, *supra* note 15, at 17.

[73] *See* Proof Letter, *supra* note 15, at 1.

[74] *See* MayStreet Letter, *supra* note 15, at 2.

[75] *See id.*

[76] *See id.* at 3.

[77] *See id.* at 6.

[78] *See* MEMX Letter, *supra* note 15, at 20.

[79] *See* NovaSparks Letter, *supra* note 15, at 1.

[80] *See id.* at 1–2.

[81] *See* BlackRock Letter, *supra* note 15, at 2–3.

[82] *See* NovaSparks Letter, *supra* note 15; IEX Letter, *supra* note 15; MayStreet Letter, *supra* note 15; BlackRock Letter, *supra* note 15; MIAX Letter, *supra* note 15.

[83] *See* NovaSparks Letter, *supra* note 15, at 1.

[84] *See id.*

[85] *See* IEX Letter, *supra* note 15, at 5.

[86] *See* MayStreet Letter, *supra* note 15, at 6–7.

[87] *See id.* at 7.

[88] *See id.*

[89] *See id.*

[90] *See* Cutler Letter, *supra* note 15, at 1–2.

[91] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[92] *See* MIAX Letter, *supra* note 15, at 2; BlackRock Letter, *supra* note 15, at 1, 3; MayStreet Letter, *supra* note 15, at 2, 3, 6.

[93] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[94] *See id.* at 2–4.

market data from the fees for its consolidation and distribution because the prospective fees charged by competing consolidators would now include fees for aggregation of consolidated market data products and transmission of such products to subscribers.[95] This commenter states that in leaving fees for existing core data elements unchanged, the Proposed Amendment fails to consider, as the Commission stated in the MDI Rule Release, that the effective national market system plan for NMS stocks will no longer be operating an exclusive SIP or performing aggregation and other operational functions.[96] The commenter argues that the proposed fees should not have been left unchanged from existing core data elements fees, but rather, should have been reduced by at least 4%—the estimated SIP operating expenses excluding profits—to reflect the new role of competing consolidators, and deduct both SIP profits and operating costs from the price. According to the commenter, this 4% discount is derived directly from Commission estimates of SIP operating expenses ($16 million) and revenues ($390 million) in 2018 without any consideration of possible profits. The commenter adds that exclusive SIP profits should also be subtracted from the proposed fees for core data content, as ''any markup for consolidation services should transition to be within the purview of competing consolidators.'' [97] According to the commenter, keeping core data fees the same as the proposal purports to do would effectively ''opaquely raise prices'' for this data content.[98]

3. Fees for Depth-of-Book Data

Some commenters argue that the calculation used by the Participants to determine the proposed depth-of-book fees is flawed and inconsistent with the MDI Rule Release because the calculation uses exchange proprietary data feeds that include full order-by-order depth-of-book, inclusive of top-of-book information, rather than the more limited depth information prescribed by the MDI Rule Release.[99] These commenters point out that while the proprietary market data depth-of-book feeds used to calculate fees for the consolidated depth-of-book information include top-of-book data as part of those offerings, fees for the consolidated depth-of-book data product under the proposal do not include top-of-book.[100] Consequently, some commenters argue, subscribers to the new core data would need to pay an additional surcharge to receive top-of-book data at current rates to obtain the same data content that is available today through proprietary feeds.[101]

Some commenters question the determination of the ratio (or multiplier) used by the Participants to set the depth-of-book feeds.[102] One commenter states that fees for depth-of-book information ''should be adjusted to use a multiplier of 2.94x to eliminate the overcharging from double counting top of book data; otherwise, those who subscribe to both Level 1 and depth of book data ''would be paying twice for top of book content.'' [103]

Some commenters state that an additional problem with the adopted approach is that the proprietary depth-of-book products, such as those used in the calculation, are primarily structured as comprehensive order-by-order feeds, which do not aggregate orders at each price level.[104] According to these commenters, the depth-of-book elements prescribed by the MDI Rule warrant a lower price because they prescribe only the aggregated quotes available at the next five prices beyond the NBBO and thus include much less content than these proprietary feeds.[105] One commenter states that complete, order-by-order depth-of-book feeds, such as those used in the calculation, are likely to be associated with ''additional operational costs because of increased message traffic with order by order data at all price levels.[106] Accordingly, the commenter argues that an aggregated feed with only five levels of depth should have been priced at a discount relative to the corresponding exchange offerings to compensate for differences in both information content and costs.[107] One commenter argues that the proposal fails to consider pricing for other proprietary data feeds that are aggregated by price level and would therefore serve as a more logical proxy for setting core data fees.[108]

One commenter states that the proposal fails to acknowledge or account for the fact that the proposed methodology relies on this commenter's equity market data fees as one of the comparison points, notwithstanding that, unlike the other exchanges' market data prices, the commenter's fees used do not include individual per user fees, but apply only on a per firm basis for firms subscribing to ''real time data.'' [109]

Some commentators believe that the proposed fees for depth-of-book data should be lower than proposed. One commenter states that retail investors should get free or very low cost depth-of-book data because it is in the best interest of retail investors, the industry and the Commission.[110] This commenter states that displaying depth-of-book data can give investors a better understanding of how prices are formed.[111] The commenter believes that the ability for an investor to see buying and selling interests at various price levels makes it easier for the investor to understand what determines the price of a particular security by seeing the interaction of market and limit orders.[112] The commenter argues that making depth-of-book data ''cheap'' would allow brokers to give the data to retail clients for no or low cost, and that, this, in turn, would increase retail participation in the securities markets, because investors will not only understand markets better, but they will participate more in the markets.[113] According to this commenter, if depth-of-book data is expensive, it will not

[95] *See id.* at 3–4.

[96] *See id.* (citing to MDI Rule Release, 86 FR at 18685).

[97] *See id.* at 4, note 12.

[98] *See id.* at 4.

[99] *See* IEX Letter, *supra* note 15, at 3–4; MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, *supra* note 15, at 6.

[100] *See id.*

[101] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 6, 11–12; BlackRock Letter, *supra* note 15, at 4–5.

[102] *See* IEX Letter, *supra* note 15; MEMX Letter, *supra* note 15; BlackRock Letter, *supra* note 15; FINRA Letter, *supra* note 15; Angel Letter, *supra* note 15; NovaSparks Letter, *supra* note 15.

[103] *See* BlackRock Letter, supra note 15, at 4–5. *See also* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 6, 11–12.

[104] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12; BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, *supra* note 15, at 6.

[105] *See* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5.

[106] *See* BlackRock Letter, *supra* note 15, at 4–5.

[107] *See* BlackRock Letter, *supra* note 15, at 4–5. *See also* IEX Letter, *supra* note 15, at 4; MEMX Letter, *supra* note 15, at 11–12.

[108] *See* IEX Letter, *supra* note 15, at 4.

[109] *See id.* The commenter also points out that its fees do not vary depending on the type of use made by those firms, do not apply to data that is redistributed with a delay of as little as 15 milliseconds (whereas exchanges typically require a 15-minute delay to avoid charges for real-time data), and were determined and justified based on costs. The commenter further states that, to the extent the commenter's fees are relevant at all, a more consistent approach would have been to reflect the commenter's fees as zero, since this particular commenter does not charge any fees on an individual per user basis for either of the two data products. According to the commenter, the latter approach would substantially reduce the average ratio and multiplier, and thus substantially reduce the fees proposed to be charged for core data. *See id.*

[110] *See* Angel Letter, *supra* note 15, at 3.

[111] *See id.* at 7.

[112] *See id.*

[113] *See id.* at 8.

help most retail investors because they will not be able to afford to see it.[114]

Another commenter states that fees for depth-of-book are unreasonably high.[115] The commenter states that, while the Participants decided on an alternative method in establishing fees and sought to demonstrate that the proposed fees are ''related to the value of the data to subscribers,'' [116] the proprietary depth-of-book price inputs used by the Participants were not properly calibrated and thus are over inclusive, resulting in depth-of-book fees that are unreasonably high.[117]

One commenter agrees with the notion that that depth-of-book data should be priced higher than top-of-book data.[118] This commenter, however, believes that the charges for depth-of-book data from the Plans should be much lower than consuming the market data directly from the exchanges because the information provided under the Plan would still be a subset of what is provided by the proprietary data feeds.[119] The commenter states that the 4x ratio used by the Participants to determine the fees for accessing depth-of-book data is too high.[120]

One commenter opposes the proposed depth-of book data fees, because they, as well as all other proposed fees, represent an overall increase in costs to end users making market data less accessible, contrary to ''the core precept of the'' MDI Rule.[121] Another commenter states that the value of the depth-of-book data should focus on greater access and availability of this kind of data, and that the Operating Committee should thus consider what price point would increase availability of depth-of-book information, rather than charging a multiplier of proprietary data feeds.[122]

One commenter expresses support for the proposed and ''moderately priced'' non-professional rate for depth-of-book information, because, in the commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which, will help broaden adoption of this new category of data.[123]

4. Fees for Auction Data

Some commenters believe that the proposed auction information fee would result in double charging for subscribers who purchase both auction and depth-of-book information.[124] According to these commenters, information about auction order imbalances is included with the proprietary depth-of-book data products used to calculate the depth-of-book prices; therefore the proposed depth-of-book prices already incorporate the fees for auction imbalance data.[125] Thus, these commenters argue that the proposed fees would result in double charging consumers who purchase both auction and depth-of-book information from competing consolidators.[126] One commenter states that depth-of-book pricing is also inappropriately used to derive the value of auction data because auction information is more closely aligned with top-of-book content which only provides high-level information about aggregate order imbalances and does not include the order by order details or data about multiple price levels typically included in proprietary depth-of-book information products.[127] One commenter states that while the pricing rationale in the proposal uses traded volumes to arrive at a 10% multiple for auction data, this ratio, however, is applied to the depth-of-book feed, which conveys information about displayed liquidity not trading activity. According to the commenter, (1) it would have been more congruent with the SROs' proposition to use Level 1 core data as the basis for pricing auction content as this feed is more closely associated with trade volume, and (2) the fees for auction information should be set to 10% of Level 1 core data prices.[128]

Some commenters argue that the fees for auction information under the Proposed Amendment should be lower.[129] One commenter states that retail investors should get free or moderately priced auction data because it is in the interests of retail investors, the industry and the Commission.[130] The commenter believes that opening and closing auction data are important in the securities markets and that providing auction data to retail investors will increase retail investor participation in the market.[131] The commenter also opines that it makes no sense for the Participants to charge professional and non-professionals the same amount for auction data.[132] Another commenter states that the filing should not be approved because the price levels do not contribute to a level playing field between competing consolidators and the current plan administrators, such that competing consolidators will be at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[133]

5. Fees for Professional and Non-Professional Users

Some commenters question the classification of users by professional or non-professional to develop the fees under the Proposed Amendment.[134]

One commenter states that it is unreasonably discriminatory against non-professional users to pay the same as professional users for auction data because professionals make far more use of the data.[135] The commenter states that the filing contains no justification as to why the Participants propose to charge professionals the same as non-professionals for auction data.[136]

Some commenters support moderately priced or free non-professional user fees. One commenter supports the proposed ''moderately priced'' non-professional rate for depth-of-book information, because, in the

[114] *See id.*

[115] *See* FINRA Letter, *supra* note 15, at 5–6.

[116] *See id.* at 5.

[117] *See id.* at 6. Specifically, the commenter states that (1) the proprietary depth-of-book product fees used in determining the ratio also include proprietary top-of-book data and auction data—both of which would be charged separately from depth-of-book data; (2) the depth-of-book product fees also included order-by-order depth information—which is typically considered more valuable, instead of aggregated—resulting in a higher ratio and overstatement of value; and (3) the proposed depth-of-book data product fees also included full depth information, *i.e.,* all prices levels (also typically considered more valuable), rather than just the top five price levels required under the MDI Rule, resulting in a higher ratio and fees that are not aligned with the value of the new depth-of-book data to subscribers. The commenter argues that, as a result, the method employed by the Participants does not align the proposed fees for the new depth-of-book data to the value of the data to subscribers. *See id.*

[118] *See* NovaSparks Letter, *supra* note 15, at 1.

[119] *See id.*

[120] *See id.*

[121] *See* Cutler Letter, *supra* note 15, at 1. This comment further states that the level of the proposed fees would make it difficult for such competing consolidators to offer products at prices competitive to those of proprietary feeds thereby placing competing consolidators at a disadvantage. *See id.*

[122] *See* MayStreet Letter, *supra* note 15, at 7.

[123] *See* BlackRock Letter, *supra* note 15, at 3, 5.

[124] *See* MEMX Letter, *supra* note 15, at 11–12. BlackRock Letter, *supra* note 15, at 4–5; FINRA Letter, note 15, at 6.

[125] *See id.*

[126] *See* BlackRock Letter, *supra* note 15, at 4–5; MEMX Letter, *supra* note 15, at 11–12; FINRA Letter, *supra* note 15, at 6.

[127] *See* BlackRock Letter, *supra* note 15, at 5.

[128] *See id.*

[129] *See* Angel Letter, *supra* note 15; Cutler Letter, *supra* note 15; BlackRock Letter, *supra* note 15.

[130] *See* Angel Letter, *supra* note 15, at 3.

[131] *See id.* at 9.

[132] *See id.*

[133] *See* Cutler Letter, *supra* note 15, at 1–2.

[134] *See* Angel Letter, *supra* note 15; BlackRock Letter, *supra* note 15; MIAX Letter, *supra* note 15; Polygon.io Letter, *supra* note 15.

[135] *See* Angel Letter, *supra* note 15, at 9–10.

[136] *See id.* at 10.

commenter's view, this aspect of the proposal ''levels the playing field'' for retail investors by providing them with access to the same information that is available to professionals traders at an affordable price, which, will help broaden adoption of this new category of data.[137] Another commenter states that free or moderately priced non-professional data, including depth-of-book and auction data, is in the best interest of brokers and exchanges because it may increase retail order flow and thus profits into the industry.[138] The commenter further believes that free or moderately priced non-professional data is in the best interest of the Commission as well because ''[p]roviding better data to retail investors at low cost will reduce the amount of SEC resources devoted to dealing with complaints based on misunderstandings of market function.'' [139]

Two commenters state they supported the part of the Proposed Amendment that consists of low non-professional user fees.[140] One commenter states that it believes the proposed non-professional user fees were a step in the right direction, but states that the Plan would charge fees for professional and non-professional users that are often higher than the fees charged by all of the exchange combined for proprietary products, creating disincentives for firms to take SIP data.[141] The commenter advocates for fees that would expand access to consolidated market data including free access to odd-lot quotation information as well as cheaper access to depth-of-book quotation information for non-professional users.[142]

Some commenters suggest that the Participants should not categorize fees based on user type and suggest on ways to improve the Proposed Amendment as it relates to these types of user classifications. One commenter urges the Commission to disapprove the Proposed Amendment and any future amendment that maintains non-professional and professional user classifications because such classifications prevent competing consolidators from being able to offer products at competitive prices compared to the proprietary data feeds.[143] One commenter recommends easier-to-track proxies for usage-based charges by utilizing data already reported by firms, such as FOCUS Reports.[144] Another commenter suggests slowing down the data feeds by 15 milliseconds to mitigate the risk of professionals ''masquerading'' as non-professionals utilizing the cheaper data.[145] One commenter states that the proposed professional user fees are based on a flawed methodology that fails to provide a cost based justification, and results in excessive fee levels which would discourage firms from registering as competing consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[146]

Another commenter believes that the Operating Committees should analyze whether it is fair and reasonable to continue to charge professional and non-professional user fees that exceed the fees charges for similar proprietary market data.[147] This commenter argues that the Proposed Amendment should be disapproved because, for some firms, the professional fees proposed may be higher than if the firms purchased certain proprietary data products.[148] However, another commenter responds that this analysis does not account for the fact that purchasers of the new data would be receiving a consolidated data product that aggregates all exchanges' data together to determine an NBBO and the five best levels of depth among all the exchanges and disregards that the Proposed Amendment includes much lower fees for non-professionals.[149] The commenter states that it is fair, reasonable, and not unreasonable discriminatory for ''Wall Street to pay higher fees than Main Street.'' [150]

6. Fees for Non-Display Use

Some commenters state that the proposed Non-Display Use fees are based on a flawed methodology that fails to provide a cost based justification, results in excessive fee levels which would discourage firms from registering as competing consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[151] One commenter states that the fees in the Proposed Amendment, including the non-display fees, would place competing consolidators at a disadvantage because they will not be able to offer products at prices competitive with those of proprietary feeds.[152]

One commenter asks that the Commission reject that Amendment and any future proposal that maintains display/non-display and professional/non-professional classifications.[153] The commenter states that, if the Proposed Amendment is not rejected, competing consolidators will not be able to offer products at competitive prices to proprietary data feeds.[154]

7. Access Fees

One commenter states that the proposed Access fees are based on a flawed methodology that fails to provide a cost based justification, and results in excessive fee levels which would discourage firms from registering as competing consolidators and hinder the formation of the decentralized consolidation model that the MDI Rule seeks to create.[155] Another commenter stated that the proposed access fees are not fair and reasonable because they are more expensive than those fees charged by exchanges in the proprietary products.[156]

8. Redistribution Fees

Two commenters suggest that the imposition of redistribution fees on competing consolidators would place competing consolidators at a competitive disadvantage.[157] Another commenter states that by charging redistribution fees to competing consolidators, the filing creates a barrier to entry to technology solution vendors to become competing consolidators.[158]

One commenter states that the Proposed Amendment should treat competing consolidators as replacements to the exclusive SIPs, not as data vendors.[159] It states that subjecting competing consolidators to the same fees as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data vendors.[160] This

[137] *See* BlackRock Letter, *supra* note 15, at 1, 3.

[138] *See* Angel Letter, *supra* note 15, at 11.

[139] *See id.* at 11.

[140] *See* MIAX Letter, *supra* note 15, at 2; MEMX Letter, *supra* note 15, at 3.

[141] *See* MEMX Letter, *supra* note 15, at 3, 18–19.

[142] *See id.* at 2.

[143] *See* Polygon.io Letter, *supra* note 15, at 2–3.

[144] *See* MayStreet Letter, *supra* note 15, at 8.

[145] *See* Angel Letter, *supra* note 15, at 11.

[146] *See* MIAX Letter, *supra* note 15, at 3.

[147] *See* MEMX Letter, *supra* note 15, at 20.

[148] *See id.*

[149] *See* NYSE Letter, supra note 15, at 8.

[150] *See id.*

[151] *See* MIAX Letter, *supra* note 15, at 3; Polygon.io Letter, *supra* note 15, at 2–3.

[152] *See* Cutler Letter, *supra* note 15, at 1–2.

[153] *See* Polygon.io Letter, *supra* note 15, at 2.

[154] *See id.* at 3.

[155] *See* MIAX Letter, *supra* note 15, at 3.

[156] *See* MEMX, *supra* note 15, at 6, 8. *See also* Cutler Letter, *supra* note 15, at 1–2 (noting that it supports the comment letter written by MEMX and that the Proposed Amendment makes market data less accessible).

[157] *See* NBIM Letter, *supra* note 15, at 2; Cutler Letter, *supra* note 15, at 1–2.

[158] *See* NovaSparks Letter, *supra* note 15, at 1.

[159] *See* MayStreet Letter, *supra* note 15, at 3.

[160] *See id.* at 3–4.

commenter further states that that competing consolidators should not be charged redistribution fees because they are not redistributing consolidated market data, but generating and distributing it for the first time.[161] According to this commenter, these fees for redistribution should not be charged by the Plan because the Plan no longer would govern the distribution of consolidated market data.[162] The commenter states that by not recognizing competing consolidators as SIPs, competing consolidators are placed at a competitive disadvantage relative to data vendors given that they take on expenses and risks that data vendors do not, such as the costs for generating consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.[163]

One commenter states that the proposed redistribution fee that would be charged to competing consolidators is inconsistent with the purposes and structure of the MDI Rule, and that this aspect of the proposal represents a ''further indication that the intent of the majority was to subvert the purpose of the Commission's order.'' [164] Another commenter states that the redistribution fee for competing consolidators is inconsistent with the MDI Rule, not fair and reasonable, and unreasonably discriminatory.[165] One commenter states that the proposal's attempt to justify the redistribution fee based on the current centralized model that charges fees to downstream vendors is unsound because, under the decentralized MDI Rule, competing consolidators would be ''stepping into the role that the SIPs hold today as the primary sources of consolidated market data.'' [166] According to this commenter, to charge a redistribution fee on top of the other proposed fees would ''unquestionably put competing consolidators at a further competitive disadvantage as compared to aggregated proprietary data products offered by exchanges,'' thus targeting them in an unfair and unreasonable manner.[167]

One commenter states the Proposed Amendment directly contradicts the Commission's directive in the MDI Rule that competing consolidators not be treated the same as market data vendors.[168] It believes that Participants are attempting to undermine the Commission's authority over market data as enumerated in the CT Plan and MDI Rule in order to preserve their current revenues from proprietary and SIP data.[169] It states that the Participants have taken the position that the competing consolidators should be charged redistribution fees just like any market data vendor. It believes this undermines the efforts of the MDI Rule.[170] The commenter reiterates the Commission's statement in the MDI Rule Release that ''the Commission believes that the fees for the data content underlying consolidated market data should not include redistribution fees for competing consolidators. Competing consolidators will take the place of the exclusive SIPs in the dissemination of consolidated market data, which today do not pay redistribution fees for the consolidation and dissemination of SIP data.'' [171] The commenter argues that by treating competing consolidators differently than the exclusive SIPs, the Participants are acting in an unreasonably discriminatory manner, effectively disregarding the Exchange Act mandates in addition to the Commission's directive in the MDI Rule.[172] The commenter argues that imposing redistribution fees on competing consolidators imposes an undue burden on competition in contravention of the standards under Section 3(f) of the Exchange Act that the Commission must consider in connection with any Commission rulemaking or review of SRO rules.[173]

Two commenters state that the redistribution fees charged to competing consolidators are in contravention of the Commission's express direction in the MDI Rule and that the Proposed Amendment disregards the directive.[174]

One commenter states that, although the Commission compared competing consolidators to self-aggregators, a more appropriate comparison would be between competing consolidators and downstream vendors.[175] According to this commenter, because such vendors would be subject to redistribution fees when redistributing data to its subscribers, it would impose a burden on competition and be unfair to vendors not to charge a redistribution fee for exactly the same activity to competing consolidators.[176]

9. Broker-Dealer Enterprise Cap

One commenter favors expanding the broker-dealer enterprise cap that is part of the current fee schedule of the Plan. The commenter states that the Proposed Amendment provides no depth-of-book enterprise cap and the Level 1 enterprise caps are out of reach for most market Participants.[177] In particular, this commenter recommends that enterprise caps be implemented at multiple tiers levels.[178]

C. NMS Plan Governance

Some commenters state that the MDI Rule should be implemented through the CT Plan, as opposed to the existing market data equity plans (*i.e.,* the CTA/CQ, and Nasdaq/UTP Plans).[179] One commenter reiterated its continued support for the provisions of the CT Plan overall.[180] The commenter states that the real and potential conflicts of interest that currently exist relating to the provision of market data directly relate to the decision-making problems at the Plans' Operating Committees.[181] The commenter supports expanding the voting representation under the CT Plan to non-SROs and having them participate as full voting members of the Operating Committee.[182] The commenter believes the Commission cannot approve the Proposed Amendment given the inherent conflicts of interests of the SROs who developed the proposals.[183] The commenter states that, if the Commission approved the Proposed Amendment, it would be giving tacit approval to the shortcomings in the governance structure of the current Plans.[184]

This commenter also notes that the proposed fee amendments are explicitly stated by the Participants to be unrelated to the cost of providing the

[161] *See id.*

[162] *See id.,* at 5.

[163] *See id.*

[164] *See* IEX Letter, *supra* note 15, at 5.

[165] *See* MIAX Letter, *supra* note 15, at 2 (citing the MDI Rule Release which stated that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,'' and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.'').

[166] *See id.*

[167] *See id.*

[168] *See* SIFMA Letter, *supra* note 15, at 4–5.

[169] *See id.* at 6.

[170] *See id.* at 7.

[171] *See id.*

[172] *See id.,* at 8.

[173] *See id.*

[174] *See* FINRA Letter, *supra* note 15, at 5; MEMX Letter, *supra* note 15, at 21.

[175] *See* NYSE Letter, supra note 15, at 7.

[176] *See id.*

[177] *See* MayStreet Letter, *supra* note 15, at 8.

[178] *See id.* at 8.

[179] *See* BMO Letter, *supra* note 15; MEMX Letter, *supra* note 15; MIAX Letter, *supra* note 15; IEX Letter, *supra* note 15; and Polygon.io Letter, *supra* note 15.

[180] *See* BMO Letter, *supra* note 15, at 1.

[181] *See id.* at 2.

[182] *See id.*

[183] *See id.*

[184] *See id.*

data, but rather to subscriber value.[185] The commenter states that this is a clear example of the Plan's Operating Committee failing to ensure that the public service mandates of the SIPs are achieved and is a failure in governance through the unmitigated conflicts of interest by voting members who just want to maximize profits.[186] The commenter states that further evidence of the failure of the governance structure on the Operating Committee is that the fee proposals have been proposed while the remaining reforms of the CT Plan are stayed pending resolution of challenges in the D.C. Circuit.[187] The commenter states that it is surprised that the proposals were filed without broader participation, given that certain members of the Operating Committee have stated publicly that the proposals contradict the Exchange Act standards for consolidated data which requires that the fees be fair, reasonable, and not unreasonably discriminatory.[188]

Another commenter also encourages the Commission to consider whether the CT Plan is a more appropriate body for setting fees for consolidated market data.[189] This commenter believes that placing the responsibility for setting fees in the hands of the CT Plan would allow SIP fees to be set by an Operating Committee that better reflects the constituencies impacted by this filing, including non-SRO representatives.[190] A second commenter states that the fee proposals are ''the result of a conflicted and unbalanced voting process,'' adding that it agreed with the recommendation that the responsibility for setting the proposed fees should be placed on the CT Plan.[191] A third commenter recommends that the Commission disapprove the proposal and reassign the responsibility for the filing to the Operating Committee for the CT Plan, which the commenter states would have a ''broader set of voting stakeholders and a fairer and less conflicted governance structure,'' a change that, as this proposal shows, is ''badly'' needed.[192]

One commenter asks the Commission to reevaluate the process that led to the creation of the Proposed Amendment and make substantive changes to avoid the amendment process being used to derail timely implementation of the MDI Rule.[193]

D. Consideration of Other Actions Under Rule 608 of Regulation NMS

In connection with recommending disapproval of the Proposed Amendment, one commenter states the Commission could consider potential action under Rule 608(a)(2) of Regulation NMS, which allows the Commission to directly propose amendments to effective national market system plans.[194] The commenter states that in connection with a Commission disapproval of the Proposed Amendment, it would ''support the Commission's efforts to ensure that the newly expanded consolidated market data (*i.e.,* new core data) under the Commission's Infrastructure Rule is disseminated in a manner consistent with the Exchange Act standards to ensure the investing public and all market participants have fair and reasonable access to it.'' [195]

One commenter believes that it would be inconsistent with the Exchange Act and Rule 608 for the Commission to *sua sponte* change any or all of the proposed fees, as any such change would be material to the Proposed Amendment.[196] The commenter states that, in its view, if the Commission intends to revise the Proposed Amendment in any material way, it must do so through rule-making under Rule 608(b)(2), by providing public notice of the specific changes it proposes and giving the Participants and general public an opportunity to comment.[197]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[198] and Rule 700 of the Commission's Rules of Practice,[199] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a . . . proposed amendment to a national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such . . . amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [200] Rule 608(b)(2) further provides that the Commission shall disapprove a proposed amendment if it does not make such a finding.[201] Pursuant to Rule 608(b)(2)(i) of Regulation NMS,[202] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendment is consistent with the Commission's MDI Rule; [203]
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [204]
- Whether, consistent with Rule 603(a) and 614(d)(3) of Regulation NMS, the Proposed Amendment provides for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendment, or conditions to its approval, would be required to make the Proposed Amendment necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act; [205]
- Whether the Proposed Amendment is consistent with Congress's finding, in

[185] *See id.*

[186] *See id.* at 2–3.

[187] *See id.* at 3.

[188] *See id.* (citing note 14 of the Notice, which states in part: ''FINRA, IEX, LTSE, MIAX, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at this time.'').

[189] *See* MEMX Letter, *supra* note 15, at 23–24.

[190] *See id.*

[191] *See* MIAX Letter, *supra* note 15, at 5.

[192] *See* IEX Letter, *supra* note 15, at 5.

[193] *See* Polygon.io Letter, *supra* note 15, at 3.

[194] *See* SIFMA Letter, *supra* note 15, at 2.

[195] *See id.*

[196] *See* NYSE Letter, *supra* note 15, at 8.

[197] *See id.*

[198] 17 CFR 242.608.

[199] 17 CFR 201.700.

[200] *See* 17 CFR 242.608(b)(2).

[201] *See id.*

[202] 17 CFR 242.608(b)(2)(i). *See also* Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

[203] *See* MDI Rule Release, *supra* note 9.

[204] *See* 17 CFR 242.608(b)(2).

[205] *See id.*

Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure ''the availability to brokers, dealers, and investors or information with respect to quotations for and transactions in securities''; [206] and

• Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,[207] the Proposed Amendment's provisions are drafted to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the plan participants that filed the NMS plan filing.'' [208] The description of the NMS plan filing, 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.[209] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[210]

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[211] any request for an opportunity to make an oral presentation.[212] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,[213] in addition to any other comments they may wish to submit about the proposed rule changes. In particular, the Commission seeks comment on the following:

1. In the MDI Rule Release, the Commission stated that ''the fees for the data content underlying consolidated market data must satisfy the statutory standards of being fair, reasonable and not unreasonably discriminatory.'' [214] What are commenters' views as to each of the fees proposed?

2. In the Cover Letter,[215] the Participants state that ''under the decentralized competing consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data.'' The Participants further state that, under the decentralized competing consolidator model described in the MDI Rule Release, the Plan's Operating Committee no longer has a role in either specifying the technology associated with exchanges providing data or contracting with a SIP and that each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. The Participants also state that the Operating Committee will not have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). According to the Participants, the Operating Committee does not have access to any information about the cost of providing consolidated market data under the decentralized competing consolidator model.

Do commenters agree with the statements that the Participants have made with respect to their ability, current or future, to determine the costs of generating consolidated market data?

3. What are commenters' views on the Participants argument that a ''value-based'' methodology is an appropriate basis to determine the fees for core data? What are commenters' views on the methodology proposed by the Participants?

4. What are commenters' views on whether the comparison of exchanges' proprietary depth-of-book fees to the current SIP feeds is an appropriate means to calculate the ''value'' of consolidated market data? Do commenters believe that the pricing for individual exchange market data products can serve as an appropriate means for justifying the proposed fees? What are commenters' views on the prices of the depth-of-book feeds—whether by reference to cost or to prices set by a competitive market for equity market data as opposed to market power?

5. What are commenters' views on the Participants' calculation of the appropriate ratio to be applied to current SIP fees to generate the proposed fees for content underlying consolidated market data? Were appropriate depth-of-book products selected for the calculation? What are commenters' views about the ratios and methodology used generate fees?

6. Under the Proposed Amendment, the consolidated market data depth-of-book product would not include top-of-book data. What are commenters' views on basing the price of depth-of-book consolidated market data on the fees for proprietary products that do not include top-of-book data?

7. In the Cover Letter,[216] the Participants state that they reviewed the depth-of-book to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth), NYSE (BQT/NYSE Integrated), and IEX (TOPS/DEEP) to determine an appropriate ratio between the fees of depth-of-book core data products and the current Level 1 (top-of-book) data. The Participants further state that they believe that the 3.94x ratio represents the difference in value between top-of-book data and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b). What are commenters' views on setting fees under the Proposed Amendment based on the ratio of fees for depth-of-book and top-of-book proprietary data products?

8. Under the Proposed Amendment, the consolidated market data depth-of-book product would include only aggregate order information at each price level, not order-by-order data. What are commenters' views on whether the price of depth-of-book consolidated market data should be based on the fees for proprietary products that include order-by-order data? What are commenters' views on the selection of the referenced

[206] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[207] *See* 15 U.S.C. 78k–1(c)(1)(B).

[208] 17 CFR 201.700(b)(3)(ii).

[209] *Id.*

[210] *Id.*

[211] 17 CFR 242.608(b)(2)(i).

[212] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[213] *See* Notice, *supra* note 6.

[214] *See* MDI Rule Release, *supra* note 9, 86 FR at 18684.

[215] *See* Cover Letter, *supra* note 1.

[216] *See* Cover Letter, *supra* note 1.

proprietary data products used to price the fees in the Proposed Amendment, including other exchange fees considered but not selected as a reference for the development of pricing under the Proposed Amendment?

9. Under the Proposed Amendment, the consolidated market data depth-of-book product would not include auction data, which would be sold separately. What are commenters' views on whether the price of depth-of-book consolidated market data should be based on the fees for proprietary depth-of-book products that include auction data?

10. What are commenters' views on whether users should be classified as professionals and non-professionals under the Proposed Amendment? Should non-professional subscribers to pay the same fees as professional subscribers for the auction data under the Proposed Amendment? Why or why not? Should professionals to pay a different price than non-professionals for products other than auction data under the Proposed Amendment? Why or why not? If commenters believe that classification based on user type for the contents of the consolidated market data is appropriate, do commenters support or oppose low-cost non-professional user fees? Why or why not?

11. What are commenters' views on the non-display fees in the Proposed Amendment?

12. What are commenters' views on the access fees in the Proposed Amendment? What are commenters' views on whether the Participants should charge access fees? Should competing consolidators be required to pay access fees? Why or why not? Should access fees be treated like connectivity fees, market data fees, or something else? Why or why not?

13. What are commenters' views on how the cost of purchasing consolidated top-of-book, depth-of-book, and auction data under the Proposed Amendment compares to the cost of subscribing to the existing proprietary data feeds that would contain similar or more data? What are commenters' views regarding the relationship of this comparison to the fees under the Proposed Amendment?

14. The Commission stated in the MDI Rule Release that ''imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with the standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model,''[217] and that ''fees proposed by the SROs should not contain redistribution fees for competing consolidators because this would hinder their ability to compete.''[218] What are commenters' views on the justification offered by the Participants in favor of charging redistribution fees to competing consolidators? What are commenters' views regarding competing consolidators being treated similarly to data vendors and charged redistribution fees? Would charging redistribution fees to competing consolidators (and thus subjecting them to the same fees as vendors and subscribers) place them at a competitive disadvantage to the exchanges offering proprietary market data for sale? Why or why not? Do commenters believe that imposing redistribution fees on competing consolidators would impose a burden on competition? Why or why not? What are commenters' views on the level of redistribution fees in the Proposed Amendment?

15. What are commenters' views on the prices for Level 1 core data, which has been expanded to include odd-lot quotations?

16. What are commenters' views on whether the operating costs of the exclusive SIPs should be deducted from the Level 1 fees in the Proposed Amendment to reflect the new role of competing consolidators? If so, how should they be taken into account? What are commenter's views on whether the operating costs of the exclusive SIPs should be taken into account in determining the fees for depth-of-book core data? If so, how should they be taken into account? Do commenters believe that the new fees for Level 1 core data should have been proposed by the Participants? Why or why not? What are commenters' views on how any new fees for Level 1 data should have been determined?

17. Overall, what are commenters' views on the proposed prices for consolidated depth-of-book data? How do commenters believe the cost of depth-of-book data under the Plan should compare to consuming the same or similar data directly from the exchanges? Do commenters believe that the proposed price point for depth-of-book data would increase the availability of the information for investors? Why or why not? Do commenters believe that the calculation of the proposed depth-of-book data fee would essentially double-charge customers for top-of-book information that they would have to buy separately through the Level I feed? Why or why not? What are commenters' views on the statement in the Proposed Amendment that depth-of-book data may not be redistributed on a delayed basis?

18. What are commenters' views on the prices for auction information? Do commenters believe the proposed prices for auction information are priced too high, too low, or at the correct level? Why or why not? What are commenters' views on the lack of a distinction between prices charged to professional and non-professional users for auction information? What are commenters' views on the statement in the Proposed Amendment that auction information may not be redistributed on a delayed basis?

19. In the Cover Letter,[219] the Participants stated that, with respect to the fees for auction information, they looked to the percentage of average dialing trading volume that occurs during an auction process and determined that roughly 10% of the trading volume takes place in auctions. The Participants stated that they therefore believe that charging a fee for auction data that is 10% of the fee charged for depth-of-book data appropriately reflects the value of auction information. What are commenters' views about this method for determining the fees for auction data?

20. What are commenters' views on the lack of an enterprise fee cap in the proposal? Should enterprise caps have been proposed by the Participants for each category of data (*e.g.,* Level 1, depth-of-book, auction information)? Should multiples enterprise caps have been proposed to reflect different size enterprises? Why or why not?

21. What are commenters' views on the Participants' clarification in the Proposed Amendment that the Per Query Fee would not apply to the expanded market data content required by the MDI Rule and would only be available for the receipt and use of the Level 1 Service?

22. In the Cover Letter, the Participants state that FINRA OTC Data will not be provided to competing consolidators, although it is still being provided to the UTP Processor for inclusion in the consolidated market data made available by the UTP Processor. What are commenters' views on the Participants' proposal to add clarifying language to make clear that UTP Level 1 Service obtained from the Processor would include FINRA OTC

[217] *See* MDI Rule Release, *supra* note 9, 86 FR at 18685.

[218] *See id.,* 86 FR at 18682, n.1136.

[219] *See* Cover Letter, *supra* note 1.

Data but would not include odd-lot information?

23. What are commenters' views on the belief of some market participants that conflicts of interest by the Participants who also sell proprietary data products have resulted in proposed fees that are not fair, reasonable, and unreasonably discriminatory? [220] What are commenters' views on whether the opinions of the advisory committee members and SROs who did not vote in favor of the Proposed Amendment should have been accommodated in the Proposed Amendment?

24. Should the Commission approve or disapprove the Proposed Amendment? Why or why not? Should the Commission approve the Proposed Amendment with modifications? If so, what modifications would be appropriate and why?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 23, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 6, 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. S7–24–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–24–89. 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 Participants' principal offices. 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 File No. S7–24–89 and should be submitted on or before March 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[221]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–04332 Filed 3–1–22; 8:45 am]

BILLING CODE 8011–01–P

[220] *See* Section III.C, *supra.*

[221] 17 CFR 200.30–3(a)(85).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17354 and #17355; NEBRASKA Disaster Number NE–00094]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. 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 Nebraska (FEMA–4641–DR), dated 02/23/2022.

Incident: Severe Storms, Straight-Line Winds, and Tornadoes.

Incident Period: 12/15/2021.

DATES: Issued on 02/23/2022.

Physical Loan Application Deadline Date: 04/25/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 11/23/2022.

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: A. 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 02/23/2022, 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: Adams, Buffalo, Burt, Cass, Cuming, Fillmore, Gage, Hamilton, Harlan, Jefferson, Johnson, Kearney, Nemaha, Nuckolls, Otoe, Pawnee, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Thayer, Washington, Webster.

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 17354 B and for economic injury is 17355 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–04356 Filed 3–1–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17356 and #17357; IOWA Disaster Number IA–00110]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. 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 Iowa (FEMA–4642–DR), dated 02/23/2022.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 12/15/2021.

DATES: Issued on 02/23/2022.

Physical Loan Application Deadline Date: 04/25/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 11/23/2022.

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: A. 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 02/23/2022, 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: Appanoose, Audubon, Buena Vista, Calhoun, Cass, Cherokee, Davis, Emmet, Floyd, Franklin, Greene, Guthrie, Hamilton, Hancock, Howard, Humboldt, Mills, Mitchell, Palo Alto, Pocahontas, Sac, Van Buren, Webster, Worth, Wright.

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 17356 B and for economic injury is 17357 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–04357 Filed 3–1–22; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0010]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2022–0010].

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

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0010].

SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 1, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526. Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, internet, and telephone surveys; mailed questionnaires; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications or new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 1	1,290,304	1	3–90	615,549
Year 2	1,290.304	1	3–90	615,549
Year 3	1,290.304	1	3–90	615,549
Totals	3,870,912			1,846647

Dated: February 25, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–04400 Filed 3–1–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11650]

60-Day Notice of Proposed Information Collection: Statement of Registration

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 2, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0003'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DDTCPublicComments@state.gov.*
- *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Attn: Andrea Battista, 2401 E St. NW, Suite H–1205, Washington, DC 20522–0112

You must include the subject (PRA 60 Day Comment), information collection title (Statement of Registration), and OMB control number (1405–0002) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding this collection to Andrea Battista, who may be reached at *BattistaAL@state.gov* or 202–663–3136.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Registration.
- *OMB Control Number:* 1405–0002.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Directorate of Defense Trade Controls (DDTC).
- *Form Number:* DS–2032.
- *Respondents:* Respondents are any person/s who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles.
- *Estimated Number of Respondents:* 14,800.
- *Estimated Number of Responses:* 17,688.
- *Average Time per Response:* 1 hour to complete the registration.
- *Total Estimated Burden Time:* 17,688 hours.
- *Frequency:* Annually, with amendments as necessary.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Pursuant to Part 122 of the International Traffic in Arms Regulation (ITAR), and section 38 of the Arms Export Control Act, 22 U.S.C. 2778, any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles or furnishing defense services is required to register with the Department of State, Directorate of Defense Trade Controls (DDTC). Pursuant to Part 129 of the ITAR, any U.S. person wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States, who engages in the business of brokering activities, is required to register with DDTC. DDTC uses the information provided by registrants to meet the mandates described in Part 122 and Part 129 of the ITAR. As appropriate, such information may be shared with other U.S. Government entities. This information is currently used in the review and action on registration requests and to ensure compliance with defense trade laws and regulations.

Methodology

Statement of Registration submissions are made via a completed DS–2032 which may be accessed from DDTC's website and submitted electronically.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2022–04318 Filed 3–1–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Women in Aviation Advisory Board; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Women in Aviation Advisory Board (WIAAB or the Board).

DATES: The meeting will be held on March 21, 2022, from 9:00 a.m.–12:00 p.m. Eastern Time.

Requests for accommodations to a disability must be received by March 11, 2022.

Requests to submit written materials to be reviewed during the meeting must be received by March 11, 2022.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the meeting may access the event live on the FAA's Twitter, Facebook and YouTube channels. For copies of meeting minutes along with all other information, please visit the WIAAB internet website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/817.*

FOR FURTHER INFORMATION CONTACT: Ms. Aliah Duckett, Federal Aviation Administration, at *S612WomenAdvisoryBoard@faa.gov.* Any committee related request should be sent to the person listed in this section or by phone at 202–267–8361.

SUPPLEMENTAL INFORMATION:

I. Background

On October 3, 2019, FAA established the Board under the Federal Advisory Committee Act (FACA) in accordance with section 612 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254). The WIAAB will develop and provide recommendations and strategies to the FAA Administrator to explore opportunities for encouraging women and girls to enter the field of aviation with the objective of promoting organizations and programs that are

providing education, training, mentorship, outreach, and recruitment of women in the aviation industry.

The charter was renewed October 3, 2021.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Recommendations Report Discussion
- Approval of Recommendations Report
- Final Thoughts

A detailed agenda will be posted on the WIAAB internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the WIAAB internet website.

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the meeting can access the livestream on the FAA's social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Board by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2022–04392 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–0361]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Inspection Authorization Refresher Course Acceptance Form

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 29, 2021. The collection is from persons or entities that desire to provide Inspection Authorization (IA) refresher courses for the purpose of IA renewal. The course providers complete FAA Form 8610–6 to substantiate their courses and administrative procedures are acceptable to the FAA Administrator.

DATES: Written comments should be submitted by April 1, 2022.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Robert Warren, by email at: *robert.w.warren@faa.gov;* phone: 202–267–1711.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–NEW.

Title: Inspection Authorization Refresher Course Acceptance Form.

Form Numbers: FAA Form 8610–6.

Type of Review: A new information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 29, 2021 (86 FR 22758). No comments were received. Successful completion of a refresher course acceptable to the Administrator is one method available for mechanics renewing their Inspection Authorization in accordance with 14 CFR 65.93. The information requested by the form enables the FAA to determine if the IA refresher course providers offer course content that meets the intent of the regulation, 14 CFR part 65.93(a)(4). The form also seeks substantiation of the course provider's administrative processes to ensure recordkeeping of the training provided to IA mechanics that have taken their courses. Though no comments were received, the number of estimated respondents used in the burden estimates has been reduced due to a decrease of course providers and accepted courses, since the 60 day **Federal Register** Notice published.

Respondents: Persons or entities who apply for or have received FAA-acceptance of courses to conduct IA refresher training.

Frequency: Course acceptance is required initially, and must be renewed every 4 years. On occasion, course providers must request acceptance when substantial course revisions are made. Course provider record keeping is a function of the number of courses taken by IA mechanics.

Estimated Average Burden per Response: 1 hours reporting, 0.1 hours recordkeeping.

Estimated Total Annual Burden: 6,860 hours.

Issued in Washington, DC, on February 25, 2022.

Tanya Glines,

Aviation Safety Inspector, Office of Safety Standards, Aircraft Maintenance Division, Airmen Section.

[FR Doc. 2022–04408 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Industry Day Meeting, and Request for Comment on the Draft Engineering Brief 105 for Vertiport Design

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of industry day meeting, and request for comment.

SUMMARY: The FAA's Office of Airports is announcing the availability of and requesting comments on the draft Engineering Brief (EB) 105 for Vertiport Design. This draft EB provides interim safety standards for aviation facilities that electric Vertical Take-Off and Landing (eVTOL) type aircraft utilize for take-off and landing. These types of aviation facilities are commonly referred to as 'vertiports'. Draft EB 105 is posted on the FAA website at: *https://www.faa.gov/airports/engineering/engineering_briefs/drafts/.* A comment matrix is also posted at this website for members of the public to utilize to submit written comments.

DATES: Comments on the draft EB 105 for Vertiport Design must be received on or before April 18, 2022.

The FAA will hold a virtual industry day meeting on the draft EB 105 on March 29, 2022 at 11:00 a.m. ET.

ADDRESSES: Please submit comments or questions regarding the draft EB 105 by email to the Federal Aviation Administration at *vertiports@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bassey, Office of Airports, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, phone: (202) 267–7605, email: *Robert.Bassey@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA developed draft EB 105 to provide interim safety standards for the design and operation of aviation facilities that electric Vertical Take-Off and Landing (eVTOL) type aircraft utilize for take-off and landing. These take-off and landing facilities for eVTOL aircraft are commonly referred to as 'vertiports'. The agency is aware of a variety of eVTOL aircraft designs currently under development within the aviation industry. These new types of eVTOL aircraft, as well as vertiports utilized by these aircraft, are often referred to as components of a new and emerging sector of the aviation system known as Advanced Air Mobility (AAM). For additional general information on AAM, see: *https://www.faa.gov/uas/advanced_operations/urban_air_mobility/* and *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/.*

The draft EB is based on research conducted by the FAA on the performance characteristics of various aircraft designs, currently under development, that will utilize vertiport facilities. The draft guidance contains a discussion of a composite aircraft (or reference aircraft), and the recommended safety standards contained in the draft guidance are only applicable to vertiports used by this composite aircraft or by any aircraft within the range of performance characteristics as this composite aircraft. The draft safety standards are not applicable for vertiport facilities that will be utilized by other types of aircraft outside the performance characteristics of this composite aircraft.

The FAA will hold a virtual industry day meeting on the draft EB 105 on March 29, 2022 at 11:00 a.m. ET. During this meeting, the FAA will provide an overview of the draft EB 105, discuss some critical aspects of the draft currently under consideration and provide an opportunity for attendees to ask questions about it. Interested parties who wish to participate in the industry day meeting will need to register and can access information on how to register on the web page where the draft EB is posted. Requests for accommodations to a disability must be received by March 18, 2022.

The FAA is seeking public comments on the draft EB for Vertiport Design to help inform the development of the final EB. The draft EB is posted on the FAA website at: *https://www.faa.gov/airports/engineering/engineering_briefs/drafts/.*

Members of the public should utilize the comments matrix provided at the above website to submit comments on the draft EB. Completed comment matrices should be submitted to the email address listed in the **ADDRESSES** section. The FAA will not accept comments during the industry day meeting.

The FAA would like to publish a final EB 105 for Vertiport Design later this year, following the adjudication of comments received during the public comment period. The FAA may update this EB as necessary to reflect the continuing development of eVTOL aircraft and as the agency learns more about these new types of aircraft. Additionally, the FAA intends to publish a new Advisory Circular (AC) on Vertiport Design in the future to provide additional guidance in this area. The FAA cancelled the previous Vertiport Design AC (AC 150/5390–3) in 2010 due to a lack of compatible aircraft use. See: *https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/23096.*

Issued in Washington, DC, on February 24, 2022.

John Dermody,

Director, Office of Airport Safety & Standards.

[FR Doc. 2022–04351 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2019–0573; Summary Notice No. –2022–14]

Petition for Exemption; Summary of Petition Received; Amazon Prime Air

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 22, 2022.

ADDRESSES: Send comments identified by docket number FAA–2019–0573 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0573.

Petitioner: Amazon Prime Air.

Sections of 14 CFR Affected: §§ 61.3(a), 61.23(a)(2), 61.113(a), 61.133, 91.7(a), 91.113(b)–(f), 91.119(b) and (c), 91.121, 91.151(a), 91.151(b), 135.25(a)(1) and (a)(2), 135.63(c) and (d), 135.65(d), 135.93, 135.95(a), 135.149(a), 135.161(a)(1)–(3), 135.203(a), 135.203(b), 135.209(a), 135.209(b), 135.243(b)(1) and (b)(2).

Description of Relief Sought: Amazon Prime Air (Amazon) seeks to amend its existing exemptions (Exemption Nos. 18601 and 18602), which permit operations under a part 135 air carrier operating certificate with an unmanned aircraft system (UAS), to enable the petitioner's commercial delivery operations using UASs. Amazon requests that the FAA amend these exemptions to cover the MK27–2 drone system and to modify the conditions and limitations of the exemptions to reflect the upgraded capabilities and enhanced safety of the MK27–2. Specifically, Amazon seeks to remove several conditions and limitations that the FAA imposed based on the capabilities of Amazon's original MK27. Amazon also seeks to remove the requirements for each pilot-in-command, check pilot, and flight instructor to hold a private pilot certificate issued under part 61 and a second class medical certificate in accordance with § 61.23(a)(2). Amazon states that the purpose of the amendments is to reflect enhancements to Amazon's UAS and operating procedures.

[FR Doc. 2022–04349 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. –2022–15]

Petition for Exemption; Summary of Petition Received; Mr. Adam Aboueid

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 22, 2022.

ADDRESSES: Send comments identified by docket number FAA–2021–0996 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0996.

Petitioner: Adam Aboueid.

Section of 14 CFR Affected: 65.65.

Description of Relief Sought: Mr. Adam Aboueid seeks relief from Title 14 Code of Federal Regulations § 65.65 that would allow him to be able to facilitate the practical aspects of aircraft dispatching training remotely for an indefinite trial period. It will still be interactive and facilitated in real-time by a qualified instructor.

[FR Doc. 2022–04350 Filed 3–1–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0862]

COVID–19 Related Relief Concerning International Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement for international operations only.

SUMMARY: The FAA proposes to extend through October 29, 2022, the Coronavirus (COVID–19)-related limited, conditional waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through March 26, 2022, for international operations only. Similarly, the FAA proposes to extend through October 29, 2022, its COVID–19-related limited, conditional policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, for international operations only. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). This relief would be limited to slots and approved operating times used by any carrier for international operations only, through October 29, 2022, and would be subject to the same terms and conditions, that the FAA has already applied to the relief that remains available through March 26, 2022.

DATES: Submit comments on or before March 7, 2022.

ADDRESSES: Submit written views and supporting data by email to the Slot Administration Office at *9-FAA-Slot-Policy@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Al Meilus, Manager, Slot Administration, AJR–G, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–2822; email *Al.Meilus@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements [1] to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA) [2] and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the COVID–19 pandemic.[3] Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on four occasions subject to certain substantive changes, including the addition of conditions, as the COVID–19 situation continued to evolve.[4] The most recent limited, conditional extension of COVID–19-related relief was issued by the FAA on October 18, 2021, and is due to expire on March 27, 2022.[5]

Current COVID–19 Situation

Since FAA's notice published October 20, 2021, granting a limited, conditional extension of COVID–19-related relief for international operations only at slot-controlled airports and IATA Level 2 airports in the United States, COVID–19 has continued to cause disruption globally, and the timeline for recovery from this global pandemic remains uncertain. The World Health Organization (WHO) reports COVID–19 cases in more than 200 countries, areas, and territories worldwide.[6] For the week ending February 20, 2022, the WHO reported over 12 million new COVID–19 cases and over 67,000 new deaths, bringing the cumulative total to more than 422 million confirmed COVID–19 cases and over 5.8 million deaths globally since the start of the COVID–19 pandemic.[7]

The WHO reports that it is monitoring multiple variants globally; currently, the WHO has classified five different variants as ''variants of concern'' and two different variants as ''variants of interest.'' [8] The Centers for Disease Control and Prevention (CDC) is monitoring all variants of COVID–19 in the United States.[9] The CDC has listed the Omicron and Delta variants as variants of concern.[10] The CDC reports that all Food and Drug Administration (FDA)-approved or authorized vaccines are expected to be effective against severe illness, hospitalizations, and deaths from the Omicron variant of COVID–19.[11]

Currently, three COVID–19 vaccines have been authorized for emergency use or approved by the FDA.[12] As of February 24, 2022, 64.8 percent of Americans are fully vaccinated, and 76.3 percent of Americans have received at least one dose.[13] Due to substantial efforts to increase vaccination rates across the globe, the United States moved away from a country-by-country restriction previously applied during the COVID–19 pandemic and adopted an air travel policy that relies primarily on vaccination to advance the safe resumption of international air travel to the United States.[14] When the FAA extended COVID–19-related relief for international operations only by notice published October 20, 2021, the number of confirmed new cases of COVID–19 in the U.S. for the week of October 18, 2021, based on WHO data, was 509,330.[15] On December 1, 2021, the first case attributable to the Omicron variant was identified in the United

[1] The FAA has authority for developing ''plans and policy for the use of the navigable airspace'' and for assigning ''by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.'' 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

[2] Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018); the April 17, 2020, notice (85 FR 21500); the October 7, 2020, notice (85 FR 63335); the January 14, 2021, Summer 2021 FAA Policy Statement (Docket No. FAA–2020–0862–0302); and, the October 20, 2021, notice (86 FR 58134), extends to all allocated slots, including slots allocated by exemption.

[3] Notice of Limited Waiver of the Slot Usage Requirement, 85 FR 15018 (Mar. 16, 2020).

[4] Notice of Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 21500 (Apr. 17, 2020); Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 63335 (Oct. 7, 2020); FAA Policy Statement: Limited, Conditional Extension of COVID–19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA–2020–0862–0302); and Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021).

[5] Extension of limited, conditional waiver of the minimum slot usage requirement for international operations only, 86 FR 58134 (Oct. 20, 2021).

[6] *https://covid19.who.int/table.*

[7] COVID–19 weekly epidemiological update, February 22, 2022, available at: *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports. See also https://covid19.who.int/for WHO COVID-19.* Dashboard with the most current number of cases reported.

[8] *https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/.*

[9] Center for Disease Control (CDC), What You Need To Know About Variants, available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html.*

[10] *Id.*

[11] *Id. See also https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/.*

[12] *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines.*

[13] CDC, COVID–19 Vaccinations in the United States, updated February 24, 2022, available at: *https://covid.cdc.gov/covid-data-tracker/#vaccinations.*

[14] *Id. See also https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/.*

[15] Notice of Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021). *See also https://covid19.who.int/region/amro/country/us.*

States.[16] For the week of February 14, 2022, which is the most recent week for which data is available, the WHO reports 716,884 confirmed new cases in the United States.[17] For the week ending on February 19, 2022, the CDC Nowcast model estimates that Omicron accounts for 99 percent of total cases.[18]

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in FAA's initial decision granting relief due to COVID–19 impacts.[19] At JFK and LGA, each slot must be used at least 80 percent of the time.[20] Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.[21]

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.[22] The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.[23]

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancelations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Summary of Petitions From Stakeholder Concerning Continued COVID–19 Relief

The FAA has received four petitions regarding COVID-related relief for the Summer 2022 season to date. The FAA received a petition from the International Air Transport Association (IATA), a joint petition from Airlines for America (A4A) and IATA, a joint petition from American Airlines (American), Delta Airlines (Delta), and United Airlines (United), and a joint petition from 31 global airlines, including Aer Lingus, Air Canada, Air China, Air Dolomiti, Air New Zealand, American Airlines, All Nippon Airways, Austrian Airlines, Avianca Airlines, Azul, British Airways, Brussels Airlines, Delta Air Lines, Edelweiss Air, Emirates, Eurowings, GOL, Iberia, KLM, Kuwait Airways, Lufthansa, Scandinavian Airlines, Singapore Airlines, Shenzhen Airlines, South African Airways, Swiss International Air Lines, Thai Airways, United Airlines, Virgin Atlantic, Virgin Australia, and WestJet Airlines.[24] All petitions received to date request further relief, for international operations only, through the end of the Summer 2022 scheduling season due to the ongoing COVID–19 impacts on demand for international air travel.

IATA petitions the FAA for continued relief for international operations, stating that relief for international traffic has ''proven to be essential . . . considering government travel restrictions that have evolved as the virus has spread and mutated, including during the past weeks with the new Omicron variant.'' IATA believes that without relief for international operations, ''airlines would have been forced to operate services unjustified by demand to preserve historic rights to slots that are critical to future connectivity and the consumer choice. Further, IATA states that ''air traffic remains hugely impacted by the COVID–19 crisis with international traffic remaining at approximately 21 percent of pre-COVID levels year to date.'' IATA notes that ''the Worldwide Airport Slot Board (WASB) is recommending a framework for slot use alleviation measures for NS22 that balances the differing speeds of regional recovery with a gradual restoration of slot rules when appropriate for the particular market'' and attached a copy of the WASB framework with its petition. Stopping short of expressly advocating for the adoption of the WASB framework in the United States, IATA asserts that within ''the U.S. international market there are still many routes deeply impacted, which would warrant a level of series returns and a reduced use ratio.'' Moreover, IATA states that ''[f]or all markets, it is essential to have a robust set of justified reasons for non-use of slots (JNUS) to manage changes in the operating environment as the pandemic evolves.''

A4A and IATA submitted a joint petition requesting ''a waiver of minimum usage rules for international operations at Level 2 and 3 airports and terminal facilities for the Summer 2022 season.'' A4A and IATA state that ''international demand has not recovered'' and that ''[b]ooking trends into spring and summer 2022 not only remain weak but slipped further since December due to the recent uptick in Omicron cases worldwide.'' A4A and IATA note that ''[t]he transpacific market, where many countries like Japan, South Korea, and China continue to impose entry bans for non-citizens, saw passenger volumes down more than 85% in December 2021, the peak of winter season.'' In addition, A4A and IATA assert that ''[a]n international waiver by the U.S. is needed to ensure that foreign countries provide a reciprocal waiver abroad.''

American, Delta, and United submitted a joint petition to ''urgently request continued relief from standard international slot usage rules during the Northern Hemisphere summer 2022 season.'' American, Delta, and United state that ''[t]he COVID–19 pandemic continues to negatively impact worldwide air travel; the Omicron variant has caused governments to significantly restrict or control entry of passengers and airline crew members and unfortunately, the future remains unpredictable.'' Attached to American, Delta, and United's joint petition was a letter from leading international airlines to slot regulators around the world. The attached letter, which included 31 international airlines (including American, Delta, and United), requests ''continued relief from standard international slot usage rules during the Northern Hemisphere summer 2022 season.'' The carriers assert that ''[i]nternational slot relief is essential for the full summer season which runs from March 27 through October 29.''

[16] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-omicron-variant.html.*

[17] *https://covid19.who.int/region/amro/country/us.*

[18] United States: Feb. 13, 2022–Feb. 19, 2022 NOWCAST. *https://covid.cdc.gov/covid-data-tracker/#variant-proportions.*

[19] *See* 85 FR 15018 (Mar. 16, 2020).

[20] Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

[21] At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. *See* JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. *See* LGA Order, 85 FR at 58257.

[22] *See* 14 CFR 93.227(a).

[23] *See* 14 CFR 93.227(j).

[24] Copies of all petitions have been placed in the docket for this proceeding.

Discussion of Proposal for Continued Relief for International Operations

In consideration of the foregoing information, the petitions that the FAA has received, and the evolving and highly unpredictable situation globally with respect to ongoing impacts from COVID–19, the FAA proposes to extend, for international operations only, the current limited, conditional relief that the FAA has already made available through March 26, 2022, through the end of the Summer 2022 season on October 29, 2022.[25] This relief would be limited to slots and approved operating times used by carriers for international operations through October 29, 2022, and would be subject to the same terms and conditions that the FAA has applied to the relief already made available through March 26, 2022, which the FAA reiterates in this notice. International operations, for the purpose of this notice, are flights intended for operation between one of the U.S. slot-controlled or IATA Level 2 airports and any point in a foreign jurisdiction.

It is not the policy of the Department of Transportation (DOT) to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. Instead, it is the policy of the Department to encourage high utilization of scarce public infrastructure. As previously stated, at some point in time, continuing waivers to preserve pre-COVID slot holdings may impede the ability of airports and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets. Therefore, the FAA emphasizes that operators should not assume further relief on the basis of COVID–19 will be forthcoming beyond the end of the Summer 2022 scheduling season.

IATA reports in its petition that international flights globally are operating at approximately ''21 percent of pre-COVID levels year to date.'' As indicated in IATA's petition, ''[g]overnments' reimposition of travel restrictions, regardless of vaccination status, in response to Omicron has led passengers to cancel or delay travel because of a legitimate fear they will be stranded, placed in quarantine, or subject to multiple and costly testing requirements. For much of international aviation, restrictions remain in place on both ends of the route which requires consumers to keep up with frequently changing policies that may impact their travel. For example, travellers [sic] have been challenged with the recent changes in testing requirements, regardless of vaccination status, as many foreign service providers are experiencing difficulty with test availability and results processing to meet the new requirements.''

The FAA agrees with IATA and the other petitioners. Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season would provide carriers with the flexibility to operate in the unpredictable international market and would support long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

The FAA notes that A4A and IATA requested a ''waiver of the minimum slot usage rules for international operations at Level 2 and 3 airports *and terminal facilities* for the Summer 2022 season.'' (emphasis added). The FAA does not allocate or assign terminal resources at the airport facility. The FAA administers runway schedule limits under the Administrator's authority to manage the efficient use of the national airspace system, and all requests concerning the use of airport terminal facilities should be directed to the respective local airport sponsor or operating authority.[26]

The FAA recognizes that domestic carriers have a mix of both domestic and international operations, and therefore the agency intends to make this relief available for international operations that would have been operated in the Summer 2022 season, but for COVID–19 impacts on air travel demand. In other words, the FAA intends to provide this conditional relief to domestic carriers on a scale that is generally comparable to each carrier's pre-COVID level of international service. The FAA would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules from the Summer 2019 scheduling season. Domestic carriers seeking relief for a particular operation under the waiver would need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates this notice to demonstrate intent to use a slot or approved operating time for an international destination. The FAA would not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Summer 2022 season if the information is dated after this notice is issued.

International operations eligible for a waiver under this proposal would be subject to all of the same conditions and policies made available in FAA's Winter 2021/2022 waiver, which remains in effect at slot-controlled, and IATA Level 2 airports in the United States for the Winter 2021/2022 season.[27] The FAA believes the conditions associated with the relief provided to date are generally comparable to the WASB package and remain necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential to suppress flight operations for which demand exists. The conditions for relief at slot-controlled airports, which the FAA would apply to the relief proposed in this notice, include:

(1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence. However, slots operated as approved on a non-historic basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States.[28] [29] Foreign carriers seeking

[25] The FAA notes that for purposes of the relief proposed in this proceeding, Canadian carriers would be treated as foreign carriers.

[26] *See* 49 U.S.C. 40103(b).

[27] Notice of Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021).

[28] Consistent with the FAA's waiver policy issued October 18, 2021, this priority would apply to slot or schedule requests for Summer 2023, which are comparable in timing, frequency, and duration to the non-historic ad hoc approvals made by the FAA for Summer 2022. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which meet the conditions of the waiver during Summer 2022 and seek to resume operating in Summer 2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

[29] Although the FAA is proposing to extend the four-week rolling return policy consistent with the

priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition is required for operations scheduled from March 27, 2022, through the duration of this relief; therefore, carriers must begin notifying the FAA of Winter returns by February 28, 2022;[30]

(2) the waiver does not apply to slots newly allocated for initial use during the Summer 2022 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.,* arrival or departure, air carrier or commuter, if applicable); and,

(3) the waiver does not apply to slots newly transferred on an uneven basis (*i.e.,* via one-way slot transaction/lease) since October 15, 2020, for the duration of the transfer.[31] Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

In addition, as proposed, an exception may be granted to these conditions based on any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the slot was held. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate that the ability to operate a particular flight or comply with the conditions of the proposed waiver is prevented or severely restricted due to an unpredictable official governmental action related to COVID–19. Official government actions that may qualify for this exception include—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID–19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas.
- Government restrictions related to COVID–19 on the maximum number of arriving or departing flights and/or the number of passengers on a specific flight or through a specific airport.
- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located.
- Government-imposed closure of businesses essential to support aviation activities (*e.g.,* closure of hotels, ground handling suppliers, etc.).
- Governmental restrictions on airline crew, including unreasonable entry requirements or unreasonable testing and/or quarantine measures.

This exception would continue to be administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). The extraordinary circumstances exception in this slot usage relief would be limited to the scope of the relief otherwise proposed; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief for domestic operations.[32]

The conditions for COVID–19-related relief for prioritizing flights canceled at IATA Level 2 airports, for purposes of establishing a carrier's operational baseline in the next corresponding season, which the FAA would apply to the relief proposed in this notice include:

(1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without assurance of priority in the next corresponding season. However, schedules operated as approved on an *ad hoc* basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on an *ad hoc* basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign carriers seeking priority under this provision would be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition would be required for operations scheduled from March 27, 2022, through the duration of this relief; therefore carriers must begin notifying the FAA of Summer returns by February 28, 2022; and,

(2) The priority for FAA schedules approved for Summer 2022 does not apply to net-newly approved operations for initial use during the Summer 2022 season. New approved times will remain eligible for priority consideration in Summer 2023 if actually operated in Summer 2022 according to established processes.

Consistent with the proposal for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances due to any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the schedule approval was held, as discussed previously with respect to slot-controlled airports. If the exception is determined not to apply, carriers would be expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. The extraordinary circumstances exception in this proposal would only apply within the scope of the relief otherwise provided by the waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief related to domestic operations.

The FAA believes an extension of relief for international operations only, through October 29, 2022, is reasonable due to fluctuating travel restrictions and the ongoing economic and health impacts of COVID–19 internationally. The proposed relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.[33] Continuing relief for this additional period would be reasonable to mitigate the impacts on passenger demand for international air

Winter 2021/2022 waiver, any carrier returning full-season slots or schedule approvals at an airport outside the United States and associated with a route to the United States will generally be expected to similarly return the complementary full-season U.S. slot or schedule approval to the FAA for re-allocation on a non-historic or *ad hoc* basis.

[30] The FAA will consider pushing the initial date for required returns depending on the issuance date of the final decision.

[31] Consistent with prior proceedings, the FAA does not propose to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy would remain in effect continuously from the initial effective date of October 16, 2020.

[32] The FAA may consider individualized requests from U.S. carriers for domestic relief on a case-by-case basis consistent with the applicable waiver standard.

[33] The FAA is responsible to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at LGA and JFK. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

travel resulting from the spread of COVID–19 worldwide.

As of the date of issuance of this notice, COVID–19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. The continuing impacts of COVID–19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally. The ultimate duration and severity of COVID–19 impacts on passenger demand for international air travel remain unclear. Even after the pandemic is contained, impacts on passenger demand for international air travel are likely to continue for some time.

If the FAA extends relief for international operations through October 29, 2022, as proposed, the FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this proposal than they had otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this proposal are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC, on February 25, 2022.

Lorelei Dinges Peter,

Assistant Chief Counsel for Regulations.

Virginia T. Boyle,

Vice President, System Operations Services.

[FR Doc. 2022–04429 Filed 2–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. Additionally, OFAC is publishing updates to the identifying information of one person currently included on the SDN List. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On February 24, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. ZAITSAU, Aliaksandr Mikalaevich (Cyrillic: ЗАЙЦАЎ, Аляксандр Мікалаевіч) (a.k.a. ZAITSEV, Aleksandr Nikolayevich; a.k.a. ZAITSEV, Alexander Nikolaevich (Cyrillic: ЗАЙЦЕВ, Александр Николаевич); a.k.a. ZAYTSEV, Aleksandr; a.k.a. ZAYTSEV, Alexander), Belarus; United Arab Emirates; DOB 22 Nov 1976; POB Ruzhany, Brest Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(i)(B) of Executive Order 14038 of August 9, 2021, "Blocking Property of Additional Persons Contributing to the Situation in Belarus" (E.O. 14038), for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

2. SHATROU, Aliaksandr Yauhenavich (Cyrillic: ШАТРОЎ, Аляксандр Яўгенавіч) (a.k.a. SHATROU, Aliaksandr; a.k.a. SHATROU, Alyaksandr; a.k.a. SHATROV, Aleksandr (Cyrillic: ШАТРОВ, Александр); a.k.a. SHATROV, Alexander; a.k.a. SHATROV, Alexander Evgenevich (Cyrillic: ШАТРОВ, Александр Евгеньевич); a.k.a. SHATROV, Alexandr Evgenevich), Belarus; Moscow, Russia; DOB 09 Nov 1978; POB Russia; nationality Belarus; alt. nationality Russia; Gender Male (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

3. RYMASHEUSKI, Aliaksei Ivanavich (Cyrillic: РЫМАШЭЎСКІ, Аляксей Іванавіч) (a.k.a. RIMASHEVSKIY, Aleksey Ivanovich (Cyrillic: РИМАШЕВСКИЙ, Алексей Иванович); a.k.a. RIMASHEVSKIY, Alexey; a.k.a. RIMASHEVSKY, Aleksei), Minsk, Belarus; DOB 29 Jun 1981; POB Salihorsk, Minsk Oblast, Belarus; nationality Belarus; Gender Male; Passport MP2145720

(Belarus); National ID No. 3290681A146PB8 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

4. VETSIANEVICH, Aliaksandr Piatrovich (Cyrillic: ВЕЦЯНЕВІЧ, Аляксандр Пятровіч) (a.k.a. VETENEVICH, Aleksandr Petrovich (Cyrillic: ВЕТЕНЕВИЧ, Александр Петрович); a.k.a. VETENEVICH, Alexander; a.k.a. VETSIANEVICH, Aliaksandr), Kolesnikova Str. 30, ap. 63, Minsk, Belarus; DOB 20 Jun 1976; nationality Belarus; Gender Male; Passport MC0978411 (Belarus); National ID No. 3200676B070PB8 (Belarus) (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

5. KHRENIN, Viktor Gennadievich (Cyrillic: ХРЕНИН, Виктор Геннадьевич) (a.k.a. KHRENIN, Victor; a.k.a. KHRENIN, Viktar Genadzevich (Cyrillic: ХРЭНІН, Віктар Генадзевіч); a.k.a. KHRENIN, Viktar Gienadzjevich; a.k.a. KHRENIN, Viktar Henadzevich (Cyrillic: ХРЭНІН, Віктар Генадзьевіч)), Minsk, Belarus; DOB 01 Aug 1971; POB Novogrudok, Grodno Region, Belarus; nationality Belarus; Gender Male; Passport KH2594621 (Belarus); National ID No. 3010871K003PB1 (Belarus) (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

6. DMITRY, Pantus Aleksandrovich (a.k.a. PANTUS, Dmitriy (Cyrillic: ПАНТУС, Дмитрий); a.k.a. PANTUS, Dzmitry), Minsk, Belarus; DOB 06 Sep 1982; POB Beryozovka, Lida District, Grodno Region, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

7. RASSALAI, Viachaslau Yevgenyevich (a.k.a. RASSALAI, Viachaslau; a.k.a. ROSSOLAY, Vyacheslav Evgenyevich (Cyrillic: РОССОЛАЙ, Вячеслав Евгеньевич)), Minsk, Belarus; DOB 17 Oct 1981; POB Minsk, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

8. VOLFOVICH, Aleksandr Grigorievich (Cyrillic: ВОЛЬФОВИЧ, Александр Григорьевич), Minsk, Belarus; DOB 28 Jun 1967; POB Kazan, Russia; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

Entities

1. OOO SOKHRA (Cyrillic: ООО СОХРА) (a.k.a. OBSCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU SOKHRA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СОХРА); f.k.a. OBSCHESTVO S ORGANICHENNOY OTVETSTVENNOSTYU SOKHRA GRUPP (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СОХРА ГРУПП); f.k.a. OBSCHESTVO S ORGANICHENNOY OTVETSTVENNOSTYU TIM INDASTRIAL SERVIS KAMPANI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТИМ ИНДАСТРИАЛ СЕРВИС КАМПАНИ); a.k.a. SOHRA LLC; a.k.a. TAA SOKHRA (Cyrillic: ТАА СОХРА); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU SOKHRA (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ СОХРА)), Zavodskaya st., d. 1k, pom. 18, Bolbasovo, Vitebsk Oblast, Orsha District 211004, Belarus (Cyrillic: ул. Заводская, д. 1к, пом. 18, Болбасово, Витебская область, Оршанский район, 211004, Belarus); Revolucyonnaya 17/19, Office no. 22, Minsk 220030, Belarus; Organization Established Date 20 Oct 2014; Registration Number 192363182 (Belarus) [BELARUS-EO14038] (Linked To: ZAITSAU, Aliaksandr Mikalaevich).

   Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

2. LLC 24X7 PANOPTES (Cyrillic: ООО 24X7 ПАНОПТЕС) (a.k.a. 24X7 PANOPTES; a.k.a. OOO 24X7 PANOPTES), Platonova st. 20B-2, Minsk 220005, Belarus (Cyrillic: ул. Платонова, 20Б-2, Минск 220005, Belarus); Registration Number 192603494 (Belarus) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the security sector of the economy of Belarus.

3. LLC SYNESIS (Cyrillic: ООО СИНЕЗИС) (a.k.a. JSC SYNESIS; a.k.a. SINEZIS OOO), Platonova 20B, Minsk 220005, Belarus; d.20B, pom. 13, komnata 14, ul. Platonova, Minsk, Belarus; Organization Established Date 27 Dec 2007; Registration Number 190950894 (Belarus) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the security sector of the economy of Belarus.

4. MINSK WHEEL TRACTOR PLANT (Cyrillic: МИНСКИЙ ЗАВОД КОЛЕСНЫХ ТЯГАЧЕЙ) (a.k.a. MINSK WHEEL TRACTOR PLANT JSC; a.k.a. MINSK WHEEL TRACTOR PLANT OPEN JOINT STOCK COMPANY; a.k.a. MINSK WHEELED TRACTOR PLANT; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO MINSKII ZAVOD KOLESNYKH TYAGACHEI; a.k.a. "OJSC MWPT"; a.k.a. "OJSC MZKT" (Cyrillic: "ОАО МЗКТ"); a.k.a. "VOLAT"),

Partizanski ave 150, 220021, Belarus; Target Type State-Owned Enterprise; Registration Number 100534485 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector and the transportation sector of the economy of Belarus.

5. BANK DABRABYT JOINT STOCK COMPANY (a.k.a. BANK DABRABYT JSC; f.k.a. BANK MOSCOW-MINSK JOINT STOCK COMPANY; f.k.a. FOREIGN BANK MOSKVA-MINSK; f.k.a. MOSCOW-MINSK FOREIGN BANK; a.k.a. OJSC BANK DABRABYT (Cyrillic: ОАО БАНК ДАБРАБЫТ)), Kommunisticheskaya Str. 49, premises 1, Minsk 220002, Belarus; SWIFT/BIC MMBNBY22; Website www.bankdabrabyt.by; Organization Established Date 07 Apr 2000; Target Type Financial Institution; alt. Target Type State-Owned Enterprise; Registration Number 807000002 (Belarus) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

6. BELARUSSIAN BANK OF DEVELOPMENT AND RECONSTRUCTION BELINVESTBANK JOINT STOCK COMPANY (a.k.a. BELARUSSIAN BANK OF DEVELOPMENT AND RECONSTRUCTION JOINT STOCK COMPANY; a.k.a. BELINVESTBANK; a.k.a. BELINVESTBANK JSC), 29 Masherova Av., Minsk 220002, Belarus; SWIFT/BIC BLBBBY2X; Website www.belinvestbank.by; Organization Established Date 09 Jan 2001; Target Type Financial Institution; Registration Number 807000028 (Belarus) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

7. CJSC BELBIZNESLIZING (a.k.a. BELBIZNESLIZING ZAO; a.k.a. BELBUSINESS LEASING), 29 Masherov Ave., office 919, Minsk 220036, Belarus; 11A Korzh Str., Minsk 220036, Belarus; Organization Established Date 27 Apr 1994; Registration Number 100646748 (Belarus) [BELARUS-EO14038] (Linked To: BELARUSSIAN BANK OF DEVELOPMENT AND RECONSTRUCTION BELINVESTBANK JOINT STOCK COMPANY).

   Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

8. LIMITED LIABILITY COMPANY BELINVEST-ENGINEERING (a.k.a. BELINVEST-ENGINEERING; a.k.a. BELINVEST-INZHINIRING OOO; a.k.a. LLC BELINVEST-ENGINEERING), 2 Melnikaite Str., office 10, Minsk 220004, Belarus; Organization Established Date 01 Jun 2011; Registration Number

191450284 (Belarus) [BELARUS-EO14038] (Linked To: BELARUSSIAN BANK OF DEVELOPMENT AND RECONSTRUCTION BELINVESTBANK JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

9. JSC 558 AIRCRAFT REPAIR PLANT (Cyrillic: ОАО 558 АВИАЦИОННЫЙ РЕМОНТНЫЙ ЗАВОД) (a.k.a. JSC 558TH AIRCRAFT REPAIR PLANT; a.k.a. "558 ARZ OAO"; a.k.a. "JSC 558 ARP"), bld. 7, 50 let VLKSM st., Baranovichi, Brest reg. 225415, Belarus (Cyrillic: 7, ул. 50 ВЛКСМ, Барановичи, Брестская обл. 225415, Belarus); Organization Established Date 09 Jun 1992; Registration Number 200166539 (Belarus) [BELARUS-EO14038].

   Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

10. OJSC KB RADAR-MANAGING COMPANY HOLDING RADAR SYSTEM (Cyrillic: ОАО КБ РАДАР-УПРАВЛЯЮЩАЯ КОМПАНИЯ ХОЛДИНГА СИСТЕМЫ РАДИОЛОКАЦИИ) (a.k.a. JSC KB RADAR; a.k.a. KB RADAR (Cyrillic: КБ РАДАР); a.k.a. KB RADAR – RADAR AND ELECTRONIC WARFARE SYSTEMS; a.k.a. KB RADAR – RADAR AND EW SYSTEMS; a.k.a. KB RADAR OJSC; a.k.a. KB RADAR-UPRAVLYAYUSHCHAYA KOMPANIYA KHOLDINGA SISTEMY RADIOLOKATSII OAO; a.k.a. OPEN JOINT STOCK COMPANY KB RADAR-MANAGEMENT COMPANY HOLDING RADAR SYSTEMS), Partizanskii 64A, Minsk 220026, Belarus (Cyrillic: пр-т Партизанский, 64а, Минск 220026, Belarus); d.24, Nezhiloe pomeshchenie, ul Promyshlennaya, Minsk 220075, Belarus; Organization Established Date 2006; Registration Number 190699027 (Belarus) [BELARUS-EO14038].

    Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

11. INDUSTRIAL-COMMERCIAL PRIVATE UNITARY ENTERPRISE MINOTOR-SERVICE (a.k.a. MINOTOR-SERVICE ENTERPRISE; a.k.a. PROIZVODSTVENNO-TORGOVOYE CHASTNOYE UNITARNOYE PREDPRIYATIYE MINOTOR-SERVIS (Cyrillic: ПРОИЗВОДСТВЕННО-ТОРГОВОЕ ЧАСТНОЕ УНИТАРНОЕ ПРЕДПРИЯТИЕ МИНОТОР-СЕРВИС); a.k.a. UE MINOTOR-SERVICE; a.k.a. UP MINATOR-SERVIS (Cyrillic: УП МІНАТОР-СЭРВІС); a.k.a. UP MINOTOR-SERVIS (Cyrillic: УП МИНОТОР-СЕРВИС); a.k.a. VYTVORCHA-HANDLEVAYE PRYVATNAYE UNITARNAYE PRADPRYEMSTVA MINATOR-SERVIS (Cyrillic: ВЫТВОРЧА-ГАНДЛЕВАЕ ПРЫВАТНАЕ УНІТАРНАЕ ПРАДПРЫЕМСТВА МІНАТОР-СЭРВІС)), ul. Karvata, d. 84, kom. 1, Minsk 220139, Belarus (Cyrillic: ул. Карвата, д. 84, ком. 1, г. Минск 220139, Belarus); Radialnaya str., 40, Minsk 220070, Belarus; Organization Established Date 1991; Registration Number 100665069 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

12. STATE OWNED FOREIGN TRADE UNITARY ENTERPRISE BELSPETSVNESHTECHNIKA (Cyrillic: ГОСУДАРСТВЕННОЕ ВНЕШТОРГОВОЕ УНИТАРНОЕ ПРЕДПРИЯТИЕ БЕЛСПЕЦВНЕШТЕХНИКА) (a.k.a. BELSPETSVNESHTECHNIKA GVTUP (Cyrillic: БЕЛСПЕЦВНЕШТЕХНИКА ГВТУП); a.k.a. SFTUE BELSPETSVNESHTECHNIKA (Cyrillic: ГВТУП БЕЛСПЕЦВНЕШТЕХНИКА)), st. Kalinovskogo, 8, Minsk 220103, Belarus (Cyrillic: ул. Калиновского, д. 8, Минск 220103, Belarus); Organization Established Date 18 Dec 1995; Registration Number 101080981 (Belarus) [BELARUS-EO14038].

    Designated pursuant to sections 1(a)(vii) and 1(a)(iv) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038 and for operating or having operated in the defense and related materiel sector of the economy of Belarus.

13. STATE AUTHORITY FOR MILITARY INDUSTRY OF THE REPUBLIC OF BELARUS (a.k.a. BELARUSIAN STATE AUTHORITY FOR MILITARY INDUSTRY; a.k.a. STATE MILITARY-INDUSTRIAL COMMITTEE OF BELARUS (Cyrillic: ГОСУДАРСТВЕННЫЙ ВОЕННО-ПРОМЫШЛЕННЫЙ КОМИТЕТ БЕЛАРУСИ)), 115 Nezavisimost ave, Minsk 220114, Belarus; 115 Nezavisimosti Avenue, Minsk 220114, Belarus; Organization Established Date 30 Dec 2003; Target Type Government Entity [BELARUS-EO14038].

    Designated pursuant to section 1(a)(ii) of E.O. 14038 for being a political subdivision, agency, or instrumentality of the Government of Belarus.

14. PUBLIC JOINT STOCK COMPANY INTEGRAL (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ИНТЕГРАЛ) (a.k.a. AAT INTEHRAL - KIRUIUCHAIA KAMPANIIA KHOLDYNGU INTEHRAL (Cyrillic: ААТ ІНТЭГРАЛ - КІРУЮЧАЯ КАМПАНІЯ ХОЛДЫНГУ ІНТЭГРАЛ); a.k.a. INTEGRAL-UPRAVLYAYUSHCHAYA KOMPANIYA KHOLDINGA INTEGRAL, OAO; a.k.a. OAO INTEGRAL - MANAGEMENT HOLDING COMPANY INTEGRAL (Cyrillic: ОАО ИНТЕГРАЛ - УПРАВЛЯЮЩАЯ КОМПАНИЯ ХОЛДИНГА ИНТЕГРАЛ); a.k.a. OTKRYTOYE AKTSIONERNOYE OBSCHESTVO INTEGRAL), I.P., d.121A, kom. 327, ul. Kazintsa g., Minsk, Belarus; Registration Number 100386629 (Belarus) [BELARUS-EO14038].

    Designated pursuant to sections 1(a)(vii) and 1(a)(iv) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038 and for operating or having operated in the defense and related materiel sector of the economy of Belarus.

15. OKB TSP SCIENTIFIC PRODUCTION LIMITED LIABILITY COMPANY (Cyrillic: НАУЧНО-ПРОИЗВОДСТВЕННОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ

ОТВЕТСТВЕННОСТЬЮ ОКБ ТСП) (a.k.a. NAUCHNO-PROIZVODSTVENNOYE OBSCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU OKB TSP; a.k.a. NAVUKOVA-VYTVORCHAYE TAVARYSTVA S ABMEZHAVANAY ADKAZNASTSYU AKB TSP (Cyrillic: НАВУКОВА-ВЫТВОРЧАЕ ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ АКБ ТСП); a.k.a. NPOOO OKB TSP (Cyrillic: НПООО ОКБ ТСП); a.k.a. NVTAA AKB TSP (Cyrillic: НВТАА АКБ ТСП); f.k.a. OBSCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU TEKHNOSOYUZPROEKT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТЕХНОСОЮЗПРОЕКТ); a.k.a. OKB TSP SPLLC), Frantsiska Skoriny St., building 1, unit 21, Minsk 220076, Belarus; Organization Established Date 08 Jul 2002; Registration Number 190369982 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

16. OOO OBORONNYE INITSIATIVY (Cyrillic: ООО ОБОРОННЫЕ ИНИЦИАТИВЫ) (a.k.a. LIMITED LIABILITY COMPANY OBORONNYE INITSIATIVY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ОБОРОННЫЕ ИНИЦИАТИВЫ; Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ АБАРОННЫЯ ІНІЦЫЯТЫВЫ); a.k.a. TAA ABARONNYJA INITSYJATYVY (Cyrillic: ТАА АБАРОННЫЯ ІНІЦЫЯТЫВЫ); a.k.a. "DEFENSE INITIATIVES COMPANY"), Perehodnaya str. 64, building 3, office 5, Minsk 220070, Belarus (Cyrillic: ул. Переходная, д. 64 корпус 3, каб. 5, Минск 220070, Belarus); Registration Number 191288292 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

On February 24, 2022, OFAC updated the entry on the SUN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under E.O. 14038.

1. JSC TRANSAVIAEXPORT AIRLINES (a.k.a. AAT AVIAKAMPANIIA TRANSAVIIAEKSPART (Cyrillic: ААТ АВІЯКАМПАНІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. ADKRYTAE AKTSYIANERNAE TAVARYSTVA AVIIAKAMPANIIA TRANSAVIIAEKSPART (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА АВІЯКАМПАНІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. AVIAKOMPANIYA TRANSAVIAEKSPORT OAO; a.k.a. JOINT STOCK COMPANY TRANSAVIAEXPORT AIRLINES; a.k.a. OAO AVIAKOMPANIYA TRANSAVIAEKSPORT (Cyrillic: ОАО АВИАКОМПАНИЯ ТРАНСАВИАЭКСПОРТ); a.k.a. OTKRYTOYE AKTSIONERNOYE OBSCHESTVO AVIAKOMPANIYA TRANSAVIAEKSPORT; a.k.a. TRANSAVIAEXPORT AIRLINES), 44, Zakharova Str., Minsk 220034, Belarus (Cyrillic: Ул. Захарова, 44, Минск

220034, Belarus); Organization Established Date 28 Dec 1992; Registration Number 100027245 (Belarus) [BELARUS-EO14038].

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OTKRYTOYE AKTSIONERNOYE OBSCHESTVO TAE AVIA (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ТАЕ АВИА) (f.k.a. AAT AVIAKAMPANIIA TRANSAVIIAEKSPART (Cyrillic: ААТ АВІЯКАМПАНІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. AAT TAE AVIYA (Cyrillic: ААТ ТАЕ АВІЯ); f.k.a. ADKRYTAE AKTSYIANERNAE TAVARYSTVA AVIIAKAMPANIIA TRANSAVIIAEKSPART (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА АВІЯКАМПАНІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. ADKRYTAE AKTSYIANERNAE TAVARYSTVA TAE AVIYA (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА ТАЕ АВІЯ); f.k.a. AVIAKOMPANIYA TRANSAVIAEKSPORT OAO; a.k.a. JOINT STOCK COMPANY TRANSAVIAEXPORT AIRLINES; a.k.a. JSC TRANSAVIAEXPORT AIRLINES; f.k.a. OAO AVIAKOMPANIYA TRANSAVIAEKSPORT (Cyrillic: ОАО АВИАКОМПАНИЯ ТРАНСАВИАЭКСПОРТ); a.k.a. OAO TAE AVIA (Cyrillic: ОАО ТАЕ АВИА); f.k.a. OTKRYTOYE AKTSIONERNOYE OBSCHESTVO AVIAKOMPANIYA TRANSAVIAEKSPORT; a.k.a. TRANSAVIAEXPORT AIRLINES), 44, Zakharova Str., Minsk 220034, Belarus (Cyrillic: Ул. Захарова, 44, Минск 220034, Belarus); d. 11, Ul. Pervomayskaya, Minsk 220034, Belarus (Cyrillic: д. 11, ул. Первомайская, Минск 220034, Belarus); Organization Established Date 28 Dec 1992; Registration Number 100027245 (Belarus) [BELARUS-EO14038].

Dated: February 24, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–04339 Filed 3–1–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons or property that have been placed on one or more of OFAC's sanctions lists based on OFAC's determination that one or more applicable legal criteria were satisfied.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. Blocking of Property and Interests in Property Pursuant to E.O. 14024

On February 24, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below. U.S. persons are generally prohibited from engaging in transactions with them. These names have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons.

BILLING CODE 4810–AL–P

Individuals

1. IVANOV, Sergei Borisovich (Cyrillic: ИВАНОВ, Сергей Борисович) (a.k.a. IVANOV, Sergei), Moscow, Russia; DOB 31 Jan 1953; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. PATRUSHEV, Nikolai Platonovich (Cyrillic: ПАТРУШЕВ, Николай Платонович) (a.k.a. PATRUSHEV, Nikolai), Moscow, Russia; DOB 11 Jul 1951; POB St. Petersburg, Russian Federation; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. SECHIN, Igor Ivanovich (Cyrillic: СЕЧИН, Игорь Иванович) (a.k.a. SECHIN, Igor), Moscow, Russia; DOB 07 Sep 1960; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. IVANOV, Sergei Sergeevich (Cyrillic: ИВАНОВ, Сергеи Сергеевич) (a.k.a. IVANOV JR., Sergey; a.k.a. IVANOV, Sergey Sergeevich), 12 BLD 1 Rochdelskaya Street Apt 13, Moscow 123002, Russia; DOB 23 Oct 1980; POB Moscow, Russia; nationality Russia; Gender Male; Passport 759511560 (Russia) issued 29 Oct 2018 expires 29 Oct 2028 (individual) [RUSSIA-EO14024] (Linked To: IVANOV, Sergei Borisovich).

   Designated pursuant to sections 1(a)(iii) and 1(a)(v) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation and for being the spouse or

adult child of Sergei Borisovich Ivanov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

5. PATRUSHEV, Andrey (Cyrillic: ПАТРУШЕВ, Андрей), St. Petersburg, Russia; DOB 1981; POB Saint Petersburg, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: PATRUSHEV, Nikolai Platonovich).

   Designated pursuant to sections 1(a)(iii) and 1(a)(v) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation and for being the spouse or adult child of Nikolai Platonovich Patrushev, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

6. SECHIN, Ivan Igorevich (a.k.a. SECHIN, Ivan (Cyrillic: СЕЧИН, Иван)), Moscow, Russia; Shvedskiy Typik 3 KV38, Moscow 125009, Russia; DOB 03 Jan 1989; POB St. Petersburg, Russia; nationality Russia; Gender Male; Passport 722759197 (Russia) issued 24 Jan 2013 expires 24 Jan 2023 (individual) [RUSSIA-EO14024] (Linked To: SECHIN, Igor Ivanovich).

   Designated pursuant to section 1(a)(v) of E.O. 14024 for being the spouse or adult child of Igor Ivanovich Sechin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

7. VEDYAKHIN, Alexander Aleksandrovich (Cyrillic: ВЕДЯХИН, Александр Александрович) (a.k.a. VEDYAKHIN, Aleksandr; a.k.a. VEDYAKHIN, Alexander), Russia; DOB 20 Feb 1977; POB Volgograd, Russia; nationality Russia; Gender Male; Passport 531179415 (Russia); National ID No. 1801541495 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. PUCHKOV, Andrey Sergeyevich (Cyrillic: ПУЧКОВ, Андрей Сергеевич) (a.k.a. PUCHKOV, Andrei; a.k.a. PUCHKOV, Andrei Sergeevich; a.k.a. PUCHKOV, Andrey), Russia; DOB 23 Jan 1977; POB Moscow, Russia; nationality Russia; Gender Male; Tax ID No. 771910226809 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. SOLOVIEV, Yuriy Alekseyevich (Cyrillic: СОЛОВЬЕВ, Юрий Алексеевич) (a.k.a. SOLOVIEV, Yuri; a.k.a. SOLOVIEV, Yuri Alekseievich; a.k.a. SOLOVYEV, Yury; a.k.a. SOLOVYOV, Yury), Russia; DOB 13 Apr 1970; POB Ulanbataar, Mongolia; nationality Russia; alt. nationality United Kingdom; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii) of E.O. 14024 for being or having been a

leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

10. ULYUTINA, Galina Olegovna (a.k.a. SOLOVIEVA, Galina Olegovna; a.k.a. ULYUTINA, Galina), 8-1-60 Philippovskiy, Moscow 119019, Russia; DOB 20 Oct 1977; POB Avdeevka, Ukraine; nationality Russia; alt. nationality Bulgaria; Gender Female; National ID No. 4510519178 (Russia); alt. National ID No. 7710206574 (Bulgaria) (individual) [RUSSIA-EO14024] (Linked To: SOLOVIEV, Yuriy Alekseyevich).

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being the spouse or adult child of Yuriy Alekseyevich Solviev, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

Entities

1. NPF OTKRITIE GROUP (Cyrillic: ГРУППА НПФ ОТКРЫТИЕ) (a.k.a. AKTSIONERNOE OBSHCHESTVO NEGOSUDARSTVENNYI PENSIONNYI FOND OTKRYTIE; a.k.a. AO NPF OTKRYTIE), ul. Timura Frunze, d. 11, str. 13, Moscow 119021, Russia; ul. Gilyarovskogo, d. 39, str. 3, Moscow 129110, Russia; Organization Established Date 09 Jun 2014; Tax ID No. 7704300571 (Russia); Registration Number 1147799009104 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. OOO NAVIGATOR ASSET MANAGEMENT (Cyrillic: ООО УК НАВИГАТОР) (a.k.a. "ASSET MANAGEMENT COMPANY NAVIGATOR"; a.k.a. "UK NAVIGATOR"), ul. Gilyarovskogo, d. 39, str. 3, et. 12, kom. 17, Moscow 129110, Russia; Organization Established Date 30 Sep 2002; Tax ID No. 7725206241 (Russia); Registration Number 1027725006638 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. OOO OTKRITIE ASSET MANAGEMENT (Cyrillic: ООО УК ОТКРЫТИЕ) (a.k.a. OTKRITIE ASSET MANAGEMENT LTD; a.k.a. UK OTKRYTIE), Ul. Kozhevnicheskaya, d. 14, str. 5, Moscow 115114, Russia; Organization Established Date 08 Dec 2000; Tax ID No. 7705394773 (Russia); Registration Number 1027739072613 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC

JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. OOO OTKRITIE CAPITAL (Cyrillic: ООО ОТКРЫТИЕ КАПИТАЛ) (a.k.a. OTKRYTIE KAPITAL), ul. Spartakovskaya, d. 5, str. 1, pom. IX, et mansarda, kom 6A, Moscow 105066, Russia; Organization Established Date 27 Apr 2020; Tax ID No. 9701158264 (Russia); Registration Number 1207700158973 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. OOO OTKRITIE FACTORING (Cyrillic: ООО ОТКРЫТИЕ ФАКТОРИНГ) (a.k.a. OTKRYTIE FAKTORING), Pr-kt Andropova, d. 18, korpus 6, pom. 4-07, Moscow 115432, Russia; ul. Letnikovskaya, d. 10, str. 4, floor 7, pomeshch. I/45, Moscow 115114, Russia; Organization Established Date 21 Apr 2016; Tax ID No. 7725314818 (Russia); Registration Number 1167746399897 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. OOO RGS HOLDING (Cyrillic: ООО РГС ХОЛДИНГ) (a.k.a. RGS KHOLDING), ul. Kievskaya, d. 7, et/kom 2A/2, Moscow 121059, Russia; Organization Established Date 26 Aug 2013; Tax ID No. 7730691642 (Russia); Registration Number 1137746769610 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. OOO TAMOZHENNAYA KARTA (Cyrillic: ООО ТАМОЖЕННАЯ КАРТА) (a.k.a. TAMOZHENNAYA KARTA), proezd Berezovoi Roshchi, dom 12,

Moscow 125252, Russia; Per. Plotnikov, d. 19/38, str. 2, Moscow 119002, Russia; Organization Established Date 16 Jun 2000; Tax ID No. 710357343 (Russia); Registration Number 1027739703672 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. OTKRITIE BROKER GROUP (Cyrillic: ГРУППА ОТКРЫТИЕ БРОКЕР) (a.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTIE BROKER; a.k.a. AO OTKRYTIE BROKER), ul. Letnikovskaya, d. 2, str. 4, Moscow 115114, Russia; Organization Established Date 28 Dec 1995; Tax ID No. 7710170659 (Russia); Registration Number 1027739704772 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. OTKRITIE CAPITAL CYPRUS LIMITED (a.k.a. OTKRITIE CAPITAL LIMITED), Millios Building, flat no: 2, Amathoyntos 42, Limassol 4532, Cyprus; Organization Established Date 06 Sep 2005; Registration Number C165058 (Cyprus) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. OTKRITIE LTD GROUP (a.k.a. OTKRITIE LTD), Nicolaou Pentadromos Center, flat no: 908G, floor no: 9, Agias Zonis & Thessalonikis 1, Limassol 3025, Cyprus; Organization Established Date 25 Jul 2012; Registration Number C309722 (Cyprus) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. PAO ROSGOSSTRAKH BANK (Cyrillic: ПАО РОСГОССТРАХ БАНК) (a.k.a. OPEN JOINT-STOCK COMPANY ROSGOSSTRAKH BANK; f.k.a. "RUSS-BANK"), Stroenie 2, 43 Myasnickaya ul., Moscow 107078, Russia; SWIFT/BIC RUIDRUMM; Website www.rgsbank.ru; Tax ID No. 7718105676 (Russia); Registration Number 1027739004809 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО БАНК ФИНАНСОВАЯ КОРПОРАЦИЯ ОТКРЫТИЕ) (a.k.a. OTKRITIE BANK; a.k.a. PAO BANK OTKRITIE FINANCIAL CORPORATION; a.k.a. PJSC BANK FK OTKRITIE (Cyrillic: ПАО БАНК ФК ОТКРЫТИЕ); a.k.a. PUBLIC JOINT STOCK COMPANY BANK OTKRITIE FINANCIAL CORPORATION), d. 2, str. 4, ul. Letnikovskaya, Moscow 115114, Russia; SWIFT/BIC JSNMRUMM; Website http://www.open.ru; Organization Established Date 15 Dec 1992; Tax ID No. 7706092528 (Russia); Registration Number 1027739019208 (Russia) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

13. PUBLIC JOINT STOCK COMPANY INSURANCE COMPANY ROSGOSSTRAKH (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СТРАХОВАЯ КОМПАНИЯ РОСГОССТРАХ) (a.k.a. IC ROSGOSSTRAKH PJSC; a.k.a. PJSC IC ROSGOSSTRAKH (Cyrillic: ПАО СК РОСГОССТРАХ); a.k.a. ROSGOSSTRAKH INSURANCE COMPANY GROUP), dom 3, ulitsa Parkovaya, Lyubertsy, Moscow Oblast 140002, Russia; Tax ID No. 7707067683 (Russia); Registration Number 1027739049689 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY BANK FINANCIAL CORPORATION OTKRITIE).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Bank Financial Corporation Otkritie, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. JOINT STOCK COMMERCIAL BANK NOVIKOMBANK (Cyrillic: АКЦИОНЕРНЫЙ КОММЕРЧЕСКИЙ БАНК НОВИКОМБАНК АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. AKTSIONERNY KOMMERCHESKI BANK NOVIKOMBANK AKTSIONERNOE OBSHCHESTVO; a.k.a. AO AKB

NOVIKOMBANK (Cyrillic: АО АКБ НОВИКОМБАНК); a.k.a. JOINT STOCK COMMERCIAL BANK NOVIKOMBANK JOINT STOCK COMPANY; f.k.a. NOVIKOMBANK AO; a.k.a. NOVIKOMBANK JCSB), bld.1,Polyanka Bolshaya str. 50/1, Moscow 119180, Russia (Cyrillic: ул. Полянка Большая, д. 50/1, стр. 1, Москва 119180, Russia); SWIFT/BIC CNOVRUMM; Website http://www.novikom.ru; BIK (RU) 044583162; Executive Order 13662 Directive Determination - Subject to Directive 3; Organization Established Date 1993; Registration ID 1027739075891; Tax ID No. 7706196340; Government Gazette Number 17541272; All offices worldwide. For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: ROSTEC).

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

15. AKTSIONERNOE OBSHCHESTVO FINTENDER (a.k.a. AO FINTENDER; a.k.a. FINTENDER JOINT STOCK COMPANY; a.k.a. FINTENDER JSC), Pr–Kt Tekstilshchikov D. 46, Pomeshch. 1, Kom.56, Kostroma 156000, Russia; Tax ID No. 7743113487 (Russia); Registration Number 1157746705930 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. AKTSIONERNOE OBSHCHESTVO RTS–KHOLDING (a.k.a. AO RTS-KHOLDING; a.k.a. RTS-HOLDING JOINT STOCK COMPANY; a.k.a. RTS-HOLDING JSC), Nab. Tarasa Shevchenko D. 23A, Ofisnoe Zd. Bashnya-2000, Moscow 121151, Russia; Website fintender.ru; Tax ID No. 7723825581 (Russia); Registration Number 1127746030411 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

17. AKTSIONERNOE OBSHCHESTVO SOVKOMBANK STRAKHOVANIE (a.k.a. AO SOVKOMBANK STRAKHOVANIE; a.k.a. SOVCOMBANK INSURANCE JSC), Pr–Kt Moskovskii D.79a, Lit.A, Saint Petersburg 196084, Russia; Website kfins.ru; Tax ID No. 7812016906 (Russia); Registration Number 1027810229150 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly

or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

18. BANK NATIONAL FACTORING COMPANY JOINT STOCK COMPANY (a.k.a. BANK NATIONAL FACTORING COMPANY JSC; a.k.a. BANK NFC JOINT STOCK COMPANY; a.k.a. "BANK NFC JSC"), 14 Ul Kozhevnicheskaya, Moscow 115114, Russia; Tax ID No. 7722159794 (Russia); Registration Number 1027700385954 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. BEST2PAY LIMITED, Ul. Professora Popova D. 37, Lit. Shch, Pomeshch. 1–N (Komn.127), Saint Petersburg 197022, Russia; Website best2pay.net; Tax ID No. 7813531811 (Russia); Registration Number 1127847218674 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

20. GMCS MANAGEMENT LIMITED LIABILITY COMPANY (a.k.a. GMCS MANAGEMENT LIMITED; a.k.a. GMCS MANAGEMENT LLC; a.k.a. GMCS MANAGEMENT LTD), Ul. Pokryshkina D. 7, Floor 1 Kom 4, Moscow 119602, Russia; Tax ID No. 7715712231 (Russia); Registration Number 1087746971135 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

21. JOINT STOCK COMPANY SOVCOMBANK LIFE (a.k.a. JSC SOVCOMBANK LIFE; a.k.a. SOVCOMBANK LIFE JSC), Ul. Butyrskaya, D. 76, P. 1, Moscow 127015, Russia; Website sovcomlife.ru; Tax ID No. 7730058711 (Russia); Registration Number 1027739059754 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. LIMITED LIABILITY COMPANY OZON BANK (a.k.a. LLC OZON BANK), 3rd Floor, Olimpiyskiy Prospekt 14, Moscow 129090, Russia; Website bank.ozon.ru; Tax ID No. 7750005771 (Russia); Registration Number

1137711000020 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. MOBILNYE PLATEZHI LIMITED LIABILITY COMPANY (a.k.a. MOBILNYE PLATEZHI; a.k.a. MOBILNYE PLATEZHI LLC), Pr–Kt Kutuzovskii D. 41, Pom.169, Et.1, Komn.5, Office 4, Moscow 121170, Russia; Website round.ru; Tax ID No. 7730648774 (Russia); Registration Number 1117746605811 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

24. PUBLIC JOINT STOCK COMPANY KB VOSTOCHNY (a.k.a. PJSC KB VOSTOCHNY; a.k.a. VOSTOCHNY COMMERCIAL BANK PJSC), Blagoveshchensk, St. Innokentiy Lane 1, Amur 675004, Russia; SWIFT/BIC DALVRU8X; Website vostobank.ru; Tax ID No. 2801015394 (Russia); Registration Number 1022800000112 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

25. RUSKONSALT (a.k.a. RUSKONSALT OOO), Ul. Malaya Semenovskaya D. 15/17, Korpus 4, Kabinet 5 (6 Floor), Moscow 107023, Russia; Website rusconsult.ru; Tax ID No. 7707327194 (Russia); Registration Number 1037707026940 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

26. SEPTEM CAPITAL LIMITED LIABILITY COMPANY (a.k.a. INVESTITSIONNAYA KOMPANIYA SEPTEM; a.k.a. SEPTEM CAPITAL LLC), Ul. Odesskaya D. 2, Pom. 6, Moscow 117638, Russia; Website septemcapital.ru; Tax ID No. 7703809863 (Russia); Registration Number 1147746436749 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

27. SOLLERS-FINANCE LIMITED LIABILITY COMPANY (a.k.a. SOLLERS-FINANCE LLC; a.k.a. SOVCOMBANK LEASING LLC), Ul. Vavilova D. 24, Str. 1, Moscow 119334, Russia; Website sovcombank–leasing.ru; Tax ID No. 7709780434 (Russia); Registration Number 1087746253781 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

28. SOVCOMBANK ASSET MANAGEMENT LIMITED LIABILITY COMPANY (a.k.a. SOVCOMBANK ASSET MANAGEMENT LLC; f.k.a. VOSTOCHNY CAPITAL MANAGEMENT COMPANY LLC), Pl. Suvorovskaya D. 1/52, K. 1, Floor 5, Pomeshch. 522–1, Moscow 127473, Russia; Website www.vostochniy–capital.ru; Tax ID No. 7707404272 (Russia); Registration Number 1187746039392 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

29. SOVCOMBANK FACTORING LIMITED LIABILITY COMPANY, Ul. Kozhevnicheskaya D.14, Moscow 115114, Russia; Website factoring.ru; Tax ID No. 7725625041 (Russia); Registration Number 1077764078226 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

30. SOVCOMBANK OPEN JOINT STOCK COMPANY (a.k.a. SOVCOMBANK OJSC), 46 Prospekt Tekstilshchikov, Kostroma 156000, Russia; SWIFT/BIC SOMRRUM1KST; Website sovcombank.ru; Tax ID No. 4401116480 (Russia) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

31. SOVCOMBANK SECURITIES LIMITED (f.k.a. KOMANA HOLDINGS LLC), Chapo Central, Flat No: 1, Floor No: 1, Spyrou Kyprianoy 20, Nicosia 1075,

Cyprus; Registration Number C339207 (Cyprus) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY)

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

32. SOVCOMBANK TECHNOLOGIES LIMITED LIABILITY COMPANY, Ul. Vokzalnaya D. 3b, Pomeshch. 49, Kom. 307, Odintsovo 143007, Russia; Tax ID No. 4400001172 (Russia); Registration Number 1214400000760 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

33. SOVCOMCARD LIMITED LIABILITY COMPANY (a.k.a. SOVCOMCARD LLC; a.k.a. SOVKOMKARD), Pr-Kt Tekstilshchikov D. 46, Pomeshch. 1, Kom.56, Kostroma 156000, Russia; Tax ID No. 9717049581 (Russia); Registration Number 5167746420265 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

34. SOVKOM FAKTORING (a.k.a. SOVCOM FACTORING), Ul. Vavilova D. 24, Et/Pom/Kom 6/XIX/13, Moscow 119334, Russia; Website roseurofactoring.ru; Tax ID No. 7736654990 (Russia); Registration Number 1137746071077 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

35. SOVKOM LIZING, Ul Vavilova D 24, Moscow 119991, Russia; Tax ID No. 7716228873 (Russia); Registration Number 1037716009011 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

36. TSIFROVYE TEKHNOLOGII BUDUSHCHEGO LIMITED LIABILITY COMPANY (a.k.a. TSIFROVYE TEKHNOLOGII BUDUSCHEGO LLC; a.k.a. TSIFROVYE TEKHNOLOGII BUDUSHCHEGO), Pr-Kt Tekstilshchikov D. 46, Pomeshch. 1, Kom.56, Kostroma 119991, Russia; Website dbosaas.ru; Tax ID No. 7717788370 (Russia); Registration Number 1147746768267 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

37. USM LIMITED LIABILITY COMPANY (a.k.a. YUESEM; a.k.a. "USM LLC"), Pr-Kt Tekstilshchikov D. 46, Pom.1, Kom.56, Kostroma 156000, Russia; Tax ID No. 7725327133 (Russia); Registration Number 1167746761302 (Russia) [RUSSIA-EO14024] (Linked To: SOVCOMBANK OPEN JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Sovcombank Open Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

38. VTB BANK PUBLIC JOINT STOCK COMPANY (Cyrillic: БАНК ВТБ ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО) (f.k.a. BANK FOR FOREIGN TRADE OF RSFSR; f.k.a. BANK OF FOREIGN TRADE OF THE RUSSIAN FEDERATION; f.k.a. BANK VNESHEI TORGOVLI OAO; f.k.a. BANK VNESHNEI TORGOVLI ROSSISKOI FEDERATSII AS A PRIVATE JOINT STOCK COMPANY; f.k.a. BANK VNESHNEI TORGOVLI RSFSR; f.k.a. BANK VNESHNEY TORGOVLI JOINT STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI OPEN JOINT STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI ROSSIYSKOY FEDERATSII CLOSED JOINT STOCK COMPANY; f.k.a. BANK VTB OAO; f.k.a. BANK VTB OPEN JOINT STOCK COMPANY; a.k.a. BANK VTB PAO; a.k.a. BANK VTB PUBLICHNOE AKTSIONERNOE OBSHCHESTVO; f.k.a. CJSC BANK FOR FOREIGN TRADE OF THE RUSSIAN FEDERATION; f.k.a. JSC VTB BANK; f.k.a. OAO BANK VTB; f.k.a. OAO VNESHTORGBANK; f.k.a. OJSC CJSC BANK FOR FOREIGN TRADE; f.k.a. RUSSIAN VNESHTORGBANK; f.k.a. VNESHTORGBANK; f.k.a. VNESHTORGBANK OF RSFSR; f.k.a. VNESHTORGBANK ROSSII CLOSED JOINT STOCK COMPANY; a.k.a. VTB BANK; f.k.a. VTB BANK OAO; f.k.a. VTB BANK OPEN JOINT STOCK COMPANY; a.k.a. VTB BANK PAO; a.k.a. VTB BANK PJSC (Cyrillic: БАНК ВТБ ПАО)), 29, Bolshaya Morskaya str., St. Petersburg 190000, Russia; 37 Plyushchikha ul., Moscow 119121, Russia; 43, Vorontsovskaya str., Moscow 109044, Russia; 11 litera, per. Degtyarny, St. Petersburg 191144, Russia; 11, lit A, Degtyarnyy pereulok, St. Petersburg 191144, Russia; 43, bld.1, Vorontsovskaya str., Moscow 109147, Russia; Bashnya Zapad, Kompleks Federatsiya, 12, nab. Presnenskaya, Moscow 123317, Russia; str. 1, 43, ul. Vorontsovskaya, Moscow 109147, Russia; Vorontsovskaya Str 43, Moscow 109147, Russia; SWIFT/BIC VTBRRUMM; Website www.vtb.com; alt. Website

www.vtb.ru; BIK (RU) 044030707; alt. BIK (RU) 044525187; Executive Order 13662 Directive Determination - Subject to Directive 1; Organization Established Date 17 Oct 1990; Target Type Financial Institution; Registration ID 1027739609391 (Russia); Tax ID No. 7702070139 (Russia); Government Gazette Number 00032520 (Russia); License 1000 (Russia); Legal Entity Number 253400V1H6ART1UQ0N98 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

39. BANCO VTB AFRICA SA (a.k.a. VTB AFRICA), 22, Rua da Missao, Luanda, Angola; SWIFT/BIC VTBLAOLU; Website www.vtb.ao; Executive Order 13662 Directive Determination - Subject to Directive 1; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

40. BANK VTB KAZAKHSTAN JOINT STOCK COMPANY (a.k.a. BANK VTB KAZAKHSTAN JSC; a.k.a. JOINT STOCK COMPANY VTB BANK KAZAKHSTAN; a.k.a. SUBSIDIARY JSC BANK VTB KAZAKHSTAN), 28 Timiryazev Street, Almaty 050040, Kazakhstan; SWIFT/BIC VTBAKZKZ; Website http://en.vtb-bank.kz/; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

41. BM BANK PUBLIC JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO BM BANK; f.k.a. AKTSIONERNY KOMMERCHESKI BANK BANK MOSKVY OTKRYTOE AKTSIONERNOE OBSCHCHESTVO; f.k.a. BANK MOSKVY PAO; f.k.a. BANK OF MOSCOW; a.k.a. BM BANK AO; a.k.a. BM BANK JSC; f.k.a. JOINT STOCK COMMERCIAL BANK – BANK OF MOSCOW OPEN JOINT STOCK COMPANY; a.k.a. PAO BM

BANK), Bld 3 8/15, Rozhdestvenka St., Moscow 107996, Russia; SWIFT/BIC MOSWRUMM; Website www.bm.ru; BIK (RU) 044525219; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; Government Gazette Number 29292940 (Russia); Registration Number 1027700159497 (Russia); All offices worldwide; for more information on directives, please visit the following link: https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

42. BUSINESS-FINANCE LIMITED LIABILITY COMPANY (a.k.a. "BUSINESS-FINANCE"; a.k.a. "BUSINESS-FINANCE LLC"), Ul. Myansnitskaya D. 35, Moscow 101000, Russia; Target Type Financial Institution; Tax ID No. 7707572492 (Russia); Registration Number 1057749598169 (Russia) [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

43. JOINT STOCK COMPANY SAROVBUSINESSBANK (f.k.a. JOINT STOCK COMMERCIAL BANK SAROVBUSINESSBANK; a.k.a. JSC SAROVBUSINESSBANK; f.k.a. PUBLIC JOINT STOCK COMPANY SAROVBUSINESSBANK), ul Silkina 13, Sarov, Nizhegorodskaya Oblast 607189, Russia; SWIFT/BIC SARORU2S; Website http://www.sbbank.ru; BIK (RU) 042202718; Target Type Financial Institution [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

44. LIMITED LIABILITY COMPANY VTB DC (a.k.a. LLC VTB DC; a.k.a. VTB DC LIMITED; a.k.a. VTB DC LTD), Room 47, office XIV, 8 Brestskaya Street, Moscow 125047, Russia; d. 35 str. 1, Prospect Leningradski, Moscow 125284, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Organization Established Date 2011; Registration Number 5117746058733 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or

controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

45. NPF VTB PENSION FUND JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO NEGOSUDARSTVENNY PENSIONNY FOND VTB PENSIONNY FOND; f.k.a. NEKOMMERCHESKAYA ORGANIZATSIYA NEGOSUDARSTVENNY PENSIONNY FOND VTB PENSIONNY FOND; a.k.a. NONPROFIT ORGANIZATION NON-STATE PENSION FUND VTB PENSION FUND; a.k.a. NON-STATE PENSION FUND VTB PENSION FUND, JSC; a.k.a. NPF VTB PENSION FUND JSC; a.k.a. NPF VTB PENSIONNY FOND, AO), d. 43 str. 1 ul. Vorontsovskaya, Moscow 109147, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; Registration ID 1147799014692 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

46. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VTB FOREKS (a.k.a. VTB FOREKS; a.k.a. VTB FOREKS OOO), Nab. Presnenskaya D. 10, Blok S, Floor 16, Moscow 123112, Russia; Organization Established Date 15 Mar 2016; Target Type Financial Institution; Tax ID No. 9701034653 (Russia); Registration Number 1167746257755 (Russia) [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

47. VIETNAM-RUSSIA JOINT VENTURE BANK (a.k.a. NGAN HANG LIEN DOANH VIET- NGA), No.1 Yet Kieu str., Hoan Kiem District, Hanoi, Vietnam; Floor 1, 2nd Floor, No 1, Yet Kieu Street,, Tran Hung Dao Ward, Hoan Kiem District, Hanoi, Vietnam; SWIFT/BIC VRBAVNVX; Website vrbank.com.vn/en; Target Type Financial Institution; Registration Number 0102100878 (Vietnam) [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

48. VTB BANK ARMENIA CLOSED JOINT STOCK COMPANY (f.k.a. SAVINGS BANK OF THE REPUBLIC OF ARMENIA; a.k.a. VTB BANK ARMENIA CJSC), 46 Ul, Nalbandyan, Yerevan 375010, Armenia; SWIFT/BIC ARMJAM22; Website www.vtb.am; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

49. VTB BANK AZERBAIJAN OPEN JOINT STOCK COMPANY (a.k.a. BANK VTB AZERBAIJAN OJSC; a.k.a. JSC VTB BANK AZERBAIJAN; f.k.a. OJSC AF BANK), 38 Khatai ave. Nasimi district, Baku AZ 1008, Azerbaijan; 60, Samed Vurgun str, Baku 1022, Azerbaijan; SWIFT/BIC VTBAAZ22; Website http://en.vtb.az/; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

50. VTB BANK BELARUS CLOSED JOINT STOCK COMPANY (f.k.a. CJSC SLAVNEFTEBANK; a.k.a. CJSC VTB BANK BELARUS; a.k.a. VTB BANK BELARUS; a.k.a. VTB BANK BELARUS CJSC; a.k.a. VTB BANK BELARUS CLOSED JOINT STOCK COMPANY), 14, Moskovskaya Street, Minsk 220007, Belarus; SWIFT/BIC SLANBY22; Website www.vtb-bank.by; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

51. VTB BANK EUROPE SE (f.k.a. OST-WEST HANDELSBANK AG; f.k.a. VTB BANK DEUTSCHLAND AG), Ruesterstrasse 7-9, Frankfurt am Main 60325,

Germany; SWIFT/BIC DOBADEF1; Website http://www.vtb.eu; Target Type Financial Institution [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

52. VTB BANK GEORGIA JOINT STOCK COMPANY (a.k.a. JSC VTB BANK GEORGIA; a.k.a. VTB BANK GEORGIA JSC; f.k.a. "UNITED GEORGIAN BANK"), 14, G. Chanturia Street, Tbilisi 0114, Georgia; SWIFT/BIC UGEBGE22; Website www.vtb.com.ge; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

53. VTB CAPITAL HOLDINGS CLOSED JOINT STOCK COMPANY (a.k.a. HOLDING VTB CAPITAL CJSC; a.k.a. KHOLDING VTB KAPITAL ZAKRYTOE AKTSIONERNOE OBSHCHESTVO; a.k.a. VTB CAPITAL HOLDING CJSC; a.k.a. VTB CAPITAL HOLDING ZAO; a.k.a. VTB CAPITAL JSC), 12 Presnenskaya nab., Moscow 123100, Russia; 4th Lesnoy Pereulok 4, Capital Plaza, Moscow 125047, Russia; Room 410, Stolyarniy Pereulok 3, bld 34, Moscow 123022, Russia; Website http://vtbcapital.com; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; Registration ID 1097746344596 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

54. VTB FACTORING LTD (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VTB FAKTORING; a.k.a. VTB FACTORING LIMITED; a.k.a. VTB FAKTORING OOO), d. 52 str. 1 nab.Kosmodamianskaya, Moscow 115054, Russia; Website www.vtbf.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Target Type Financial Institution; Registration ID 5087746611145 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-

center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

55. VTB PENSION ADMINISTRATOR LIMITED (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VTB PENSIONNY ADMINISTRATOR; a.k.a. VTB PENSION ADMINISTRATOR LTD; a.k.a. VTB PENSIONNY ADMINISTRATOR OOO), d. 52 str. 1 nab.Kosmodamianskaya, Moscow 115054, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Organization Type: Activities of holding companies; Registration ID 1097746178232 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

56. VTB REGISTRAR CLOSED JOINT STOCK COMPANY (a.k.a. JOINT STOCK COMPANY VTB REGISTRAR; a.k.a. JSC VTB REGISTRAR; a.k.a. VTB REGISTRAR; a.k.a. VTB REGISTRAR CJSC), 23, Pravdy Street, Moscow 125040, Russia; Website www.vtbreg.ru; BIK (RU) 044525745; Executive Order 13662 Directive Determination - Subject to Directive 1; Registration Number 1045605469744 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

57. VTB SPECIALIZED DEPOSITORY CLOSED JOINT STOCK COMPANY (a.k.a. CJS VTB SPECIALIZED DEPOSITORY; a.k.a. VTB SPECIALIZED DEPOSITORY CJSC), 35 Myasnitskaya Street, Moscow 101000, Russia; Website www.odk.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Organization Established Date 04 Jul 1996; Target Type Financial Institution; Registration Number 1027739157522 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662]

[RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

58. WEST SIBERIAN COMMERCIAL BANK PUBLIC JOINT STOCK COMPANY (a.k.a. WEST SIBERIAN COMMERCIAL BANK; a.k.a. WEST SIBERIAN COMMERCIAL BANK PJSC; a.k.a. ZAPSIBCOMBANK), 1, 8 March Street, Tyumen, Tyumenskaya Oblast 625000, Russia; Website http://www.zapsibkombank.ru; alt. Website http://www.wscb.ru; BIK (RU) 047102613; Target Type Financial Institution [RUSSIA-EO14024] (Linked To: VTB BANK PUBLIC JOINT STOCK COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, VTB Bank Public Joint Stock Company, a person whose property and interests in property are blocked pursuant to E.O. 14024.

59. LIMITED LIABILITY COMPANY ATLANT S (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АТЛАНТ С) (a.k.a. ATLANT S LIMITED; a.k.a. ATLANT S OOO; a.k.a. LLC ATLANT S (Cyrillic: ООО АТЛАНТ С)), et 1 pom 1 kom 17, dom 20, ulitsa Pleshcheyeva, Moscow 127560, Russia; Organization Established Date 16 Mar 1992; Tax ID No. 7715023288 (Russia); Registration Number 1027700084312 (Russia) [RUSSIA-EO14024] (Linked To: PUCHKOV, Andrey Sergeyevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Andrey Sergeyevich Puchkov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

60. LIMITED LIABILITY COMPANY INSPIRA INVEST A (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНСПИРА ИНВЕСТ А) (a.k.a. INSPIRA INVEST A OOO; a.k.a. LLC INSPIRA INVEST A (Cyrillic: ООО ИНСПИРА ИНВЕСТ А)), et 1 pom 2 kom 28-1 of 1, dom 9, ulitsa Leninskaya Sloboda, Moscow 115280, Russia; Organization Established Date 10 Apr 2017; Tax ID No. 7725367175 (Russia); Registration Number 1177746359834 (Russia) [RUSSIA-EO14024] (Linked To: PUCHKOV, Andrey Sergeyevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Andrey Sergeyevich Puchkov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

B. Persons Determined To Be Subject to Directive 2 Under E.O. 14024

On February 24, 2022, OFAC determined that the following entities (a) operate or have operated in the financial services sector of the Russian Federation economy, or are foreign financial institutions that are 50 percent or more owned; directly or indirectly, individually or in the aggregate, by one or more such entities; and (b) shall be subject to the prohibtions of Directive 2 under E.O. 14024, ''Prohibitions Related to Correspondent Accounts and Processing of Transactions Involving Certain Foriegn Financial Institutions.'' These names have been placed on OFAC's List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions.

1. PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕРБАНК РОССИИ) (f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN FEDERATION; f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC; f.k.a. OJSC SBERBANK OF RUSSIA; f.k.a. OPEN JOINT STOCK COMPANY SBERBANK OF RUSSIA; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. PJSC SBERBANK (Cyrillic: ПАО СБЕРБАНК); f.k.a. SBERBANK OF RSFSR; a.k.a. SBERBANK OF RUSSIA; a.k.a. SBERBANK ROSSII; f.k.a. SBERBANK ROSSII OAO), 19 ul. Vavilova, Moscow 117312, Russia (Cyrillic: ул. Вавилова, д. 19, Москва 117312, Russia); SWIFT/BIC SABRRUMM; Website www.sberbank.ru; alt. Website www.sberbank.com; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7707083893 (Russia); Registration Number 1027700132195 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

2. INSURANCE COMPANY SBERBANK INSURANCE LIMITED LIABILITY COMPANY (a.k.a. LLC INSURANCE COMPANY SBERBANK INSURANCE; f.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVAYA KOMPANIYA SBERBANK OBSHCHEE

STRAKHOVANIE; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVAYA KOMPANIYA SBERBANK STRAKHOVANIE; a.k.a. SBERBANK INSURANCE COMPANY LTD; a.k.a. SBERBANK INSURANCE IC LLC; a.k.a. SBERBANK STRAHOVANIE OOO SK; a.k.a. SK SBERBANK STRAHOVANIE LLC; a.k.a. STRAKHOVAYA KOMPANIYA SBERBANK STRAKHOVANIE), 42 Bolshaya Yakimanka St., b. 1-2, office 209, Moscow 119049, Russia; 7 ul. Pavlovskaya, Moscow, Russia; 3 Poklonnaya Street, building 1, floor 1, office 3, Moscow 121170, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147746683479 (Russia); Tax ID No. 7706810747 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

3. JOINT STOCK COMPANY SBERBANK (a.k.a. AKTSIONERNE TOVARYSTVO SBERBANK; a.k.a. JSC SBERBANK; a.k.a. JSC SBERBANK OF RUSSIA; a.k.a. PUBLICHNE AKTSIONERNE TOVARYSTVO DOCHIRNII BANK SBERBANKU ROSII; f.k.a. SBERBANK OF RUSSIA SUBSIDIARY BANK PRIVATE JOINT STOCK COMPANY; a.k.a. SBERBANK OF RUSSIA SUBSIDIARY BANK PUBLIC JOINT STOCK COMPANY; a.k.a. SUBSIDIARY BANK SBERBANK OF RUSSIA PUBLIC JOINT STOCK COMPANY), 46 Volodymyrska street, Kyiv 01601, Ukraine; 46 Vladimirskaya St, Kyiv 01601, Ukraine; SWIFT/BIC SABRUAUK; Website www.sberbank.ua; alt. Website sbrf.com.ua; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 25959784 (Ukraine); Tax ID No. 259597826652 (Ukraine); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

4. JOINT STOCK COMPANY SBERBANK AUTOMATED TRADE SYSTEM (a.k.a. JOINT STOCK COMPANY SBERBANK-AUTOMATED SYSTEM FOR TRADING; a.k.a. JSC SBERBANK-AUTOMATED SYSTEM FOR TRADING; a.k.a. SBERBANK-AST JSC; a.k.a. SBERBANK-AST ZAO; a.k.a. SBERBANK-AUTOMATED TRADING SYSTEM CLOSED JOINT STOCK COMPANY; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK AVTOMATIZIROVANNAYA SISTEMA TORGOV), d. 24 str. 2 ul. Novoslobodskaya, Moscow 127055, Russia; 12 B. Savvinsky Lane, building 9, floor 1, office 1, room 1, Moscow 119435, Russia; Website www.sberbank-ast.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027707000441 (Russia); Tax ID No. 7707308480 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

5. JOINT STOCK COMPANY SBERBANK LEASING (a.k.a. CJSC SBERBANK LEASING; f.k.a. RUSSKO-GERMANSKAYA LIZINGOVAYA KOMPANIYA ZAO; a.k.a. SBERBANK LEASING JSC; a.k.a. SBERBANK LEASING ZAO; a.k.a. SBERBANK LIZING ZAKRYTOE AKTSIONERNOE OBSHCHESTVO), Novoivanovskoe workers settlement, Odintsovo, Moscow Region 143026, Russia; 6 Vorobievskoe shosse, Moscow 119285, Russia; Website www.sberleasing.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027739000728 (Russia); Tax ID No. 7707009586 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

6. JOINT STOCK COMPANY SBERBANK PRIVATE PENSION FUND (a.k.a. CJSC NON-STATE PENSION FUND OF SBERBANK; f.k.a. NEGOSUDARSTVENNY PENSIONNY FOND SBERBANKA; a.k.a. NPF

SBERBANKA ZAO; a.k.a. SBERBANK PPF JSC; a.k.a. SBERBANK PRIVATE PENSION FUND CLOSED JOINT STOCK COMPANY; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO NEGOSUDARSTVENNY PENSIONNY FOND SBERBANKA), d. 31 G ul. Shabolovka, Moscow 115162, Russia; Website www.npfsberbanka.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147799009160 (Russia); Tax ID No. 7725352740 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

7. LIMITED LIABILITY COMPANY SBERBANK CAPITAL (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SBERBANK KAPITAL; a.k.a. SBERBANK CAPITAL LIMITED LIABILITY COMPANY; a.k.a. SBERBANK CAPITAL LLC; a.k.a. SBERBANK KAPITAL OOO), d. 19 ul. Vavilova, Moscow 117997, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1087746887678 (Russia); Tax ID No. 7736581290 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

8. LIMITED LIABILITY COMPANY SBERBANK FINANCIAL COMPANY (a.k.a. LLC SBERBANK FINANCIAL COMPANY; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU FINANSOVAYA KOMPANIYA SBERBANKA; a.k.a. SBERBANK FINANCE COMPANY LIMITED LIABILITY COMPANY; a.k.a. SBERBANK FINANCE LLC; a.k.a. SBERBANK-FINANCE; a.k.a. SBERBANK-FINANS OOO), d. 29/16 per. Sivtsev Vrazhek, Moscow 119002, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link:

https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1107746399903 (Russia); Tax ID No. 7736617998 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

9. LIMITED LIABILITY COMPANY SBERBANK INSURANCE BROKER (a.k.a. LLC INSURANCE BROKER OF SBERBANK; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVOI BROKER SBERBANKA; a.k.a. OOO STRAKHOVOI BROKER SBERBANKA; a.k.a. SBERBANK INSURANCE BROKER LLC), 42 Bolshaya Yakimanka St., b. 1-2, office 206, Moscow 119049, Russia; 1 Vasilisy Kozhinoy Street, building 1, floor 11, room 30, Moscow 121096, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147746683468 (Russia); Tax ID No. 7706810730 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

10. LIMITED LIABILITY COMPANY SBERBANK INVESTMENTS (a.k.a. SBERBANK INVESTMENTS LLC; a.k.a. SBERBANK INVESTMENTS OOO), 46 Molodezhnaya St, Odintsovo, Moscow Region 143002, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5039441 (Russia); Registration Number 1105032007761 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

11. OPEN JOINT STOCK COMPANY BPS-SBERBANK (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕР БАНК) (a.k.a. BPS SBERBANK OJSC; a.k.a. BPS-SBERBANK OAO (Cyrillic: OAO СБЕР БАНК); a.k.a. SBER BANK), 6 Mulyavina Boulevard, Minsk 220005, Belarus; SWIFT/BIC BPSBBY2X; Website www.sber-bank.by; alt. Website www.bps-sberbank.by; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 100219673 (Belarus); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

12. SB SECURITIES SA, Boulevard Konrad Adenauer 2, Luxembourg 1115, Luxembourg; 14, rue Edward Steichen, L-2540, Luxembourg; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID B171037 (Luxembourg); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

13. SBERBANK EUROPE AG, Schwarzenbergplatz 3, Wien 1010, Austria; SWIFT/BIC SABRATWW; Website www.sberbank.at; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. ATU55795009 (Austria); Registration Number FN 161285 i (Austria); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662]

[RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

14. SETELEM BANK LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СЕТЕЛЕМ БАНК) (a.k.a. CETELEM BANK LIMITED LIABILITY COMPANY; a.k.a. CETELEM BANK LLC (Cyrillic: СЕТЕЛЕМ БАНК ООО); f.k.a. KOMMERCHESKI BANK UKRSIBBANK OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU; a.k.a. SETELEM BANK OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU; a.k.a. SETELEM BANK OOO), 26 ul. Pravdy, Moscow 125124, Russia (Cyrillic: ул. Правды, д. 26, г. Москва 125124, Russia); SWIFT/BIC CETBRUMM; Website www.cetelem.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027739664260 (Russia); Tax ID No. 6452010742 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

15. SUBSIDIARY BANK SBERBANK OF RUSSIA JOINT STOCK COMPANY (a.k.a. DOCHERNI BANK AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. SB SBERBANK JSC; f.k.a. "TEXAKABANK JSC"), 30/26, Gogol/Kaldayakov Street, Almaty 050010, Kazakhstan; 13/1 Al-Farabi Avenue, Bostandyk District, Almaty 050059, Kazakhstan; Zenkov St, 24, Almaty 480100, Kazakhstan; SWIFT/BIC SABRKZKA; Website www.sberbank.kz; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 600900050984 (Kazakhstan); Registration Number 930740000137 (Kazakhstan); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

16. ARIMERO HOLDING LIMITED, Agiou Andreou, 332, Partician Chambers, Limassol 3035, Cyprus; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration Number C146742 (Cyprus) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

17. IKS JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO SPETSIALIZIROVANNYI ZASTROISHCHIK IKS; a.k.a. "AO SZ IKS"; a.k.a. "IKS JSC"), 33 Oktyabrskaya St, Nizhny Novgorod 603005, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5263023906 (Russia); Registration Number 1025203020424 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

18. INSURANCE COMPANY SBERBANK LIFE INSURANCE LIMITED LIABILITY COMPANY (a.k.a. LIMITED LIABILITY COMPANY INSURANCE COMPANY SBERBANK INSURANCE; a.k.a. SBERBANK LIFE INSURANCE IC LLC), 3 Poklonnaya St., Building 1, Moscow 121170, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7744002123 (Russia); Registration Number 1037700051146 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

19. JOINT STOCK COMPANY RASCHETNIYE RESHENIYA (a.k.a. JSC RASCHETNIYE RESHENIYA; a.k.a. LIMITED LIABILITY COMPANY NON-BANK CREDIT ORGANIZATION SETTLEMENT SOLUTIONS; a.k.a. "JSC SETTLEMENT SOLUTIONS"), Room XLIV, 11th floor, 118/1 Varshavskoye Shosse, Moscow 117587, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024

Directive 2): 26 Mar 2022; Tax ID No. 7727718421 (Russia); Registration Number 1107746390949 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

20. LIMITED LIABILITY COMPANY MARKET FUND ADMINISTRATION (a.k.a. SBERBANK FUND ADMINISTRATION LIMITED LIABILITY COMPANY; a.k.a. "MARKET FA LLC"), 79 V. Lenina St, room 8, Derbent, Dagestan 368602, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736618039 (Russia); Registration Number 1107746400827 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

21. LIMITED LIABILITY COMPANY PROMISING INVESTMENTS (a.k.a. "PERSPECTIVE INVESTMENTS LIMITED LIABILITY COMPANY"; a.k.a. "PROMISING INVESTMENTS LLC"), 46 Molodezhnaya St., Office 335, Odintsovo, Moscow Region 143007, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5032218680 (Russia); Registration Number 1105032001458 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

22. LIMITED LIABILITY COMPANY SBERBANK CIB HOLDING (a.k.a. SB KIB KHOLDING; a.k.a. SBERBANK CIB HOLDING LLC), 19 Vavilova St, Moscow 117312, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7709297379 (Russia); Registration Number 1027700057428 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

23. LIMITED LIABILITY COMPANY SBERBANK FACTORING (a.k.a. KORUS DISTRIBUTION LIMITED; a.k.a. SBERBANK FACTORING LLC; a.k.a. SBERBANK FAKTORING), Room 1, 31a/bld. 1 Leningradsky Ave, Moscow 125284, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link:

https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7802754982 (Russia); Registration Number 1117847260794 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

24. LIMITED LIABILITY COMPANY YOOMONEY (a.k.a. YOOMONEY LIMITED LIABILITY COMPANY; a.k.a. YOOMONEY LLC), 82 bld. 2 Sadovnicheskaya St, Moscow 115035, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736554890 (Russia); Registration Number 1077746365113 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

25. TEKHNOLOGII KREDITOVANIYA LIMITED LIABILITY COMPANY (a.k.a. OOO LENDING TECHNOLOGIES; a.k.a. OOO TEHNOLOGII KREDITOVANYA), Room 1.104, 23/1 Vavilova St, Moscow 117312, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736317458 (Russia); Registration Number 1187746782519 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

26. VYDAYUSHCHIESYA KREDITY MICROCREDIT COMPANY LIMITED LIABILITY COMPANY (a.k.a. MCC VYDAYUSHIESYA KREDITY LLC; a.k.a. MIKROKREDITNAYA KOMPANIYA VYDAYUSHCHIESYA KREDITY), 32 Kutuzovsky Avenue, building 1, floor 6, room 6.C.01, Moscow 121170, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7725374454 (Russia); Registration Number 1177746493473 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

C. Persons Detemined To Be Subject to Directive 3 Under E.O. 4024

On February 24, 2022, OFAC determined that the following entities (a) operate or have operated in the financial services sector of the Russian Federation economy, and (b) shall be subject to the prohibitions of Directive 3 under E.O. 14024, ''Prohibitions Related to New Debt and Equity of Certain Russia-related Entities.'' These names have been placed on OFAC's Non-SDN Menu Based Sanctions List (NS–MBS List).

1. PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕРБАНК РОССИИ) (f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN FEDERATION; f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC; f.k.a. OJSC SBERBANK OF RUSSIA; f.k.a. OPEN JOINT STOCK COMPANY SBERBANK OF RUSSIA; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. PJSC SBERBANK (Cyrillic: ПАО СБЕРБАНК); f.k.a. SBERBANK OF RSFSR; a.k.a. SBERBANK OF RUSSIA; a.k.a. SBERBANK ROSSII; f.k.a. SBERBANK ROSSII OAO), 19 ul. Vavilova, Moscow 117312, Russia (Cyrillic: ул. Вавилова, д. 19, Москва 117312, Russia); SWIFT/BIC SABRRUMM; Website www.sberbank.ru; alt. Website www.sberbank.com; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7707083893 (Russia); Registration Number 1027700132195 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

2. JOINT STOCK COMPANY ALFA-BANK (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО АЛЬФА-БАНК) (a.k.a. ALFA-BANK; a.k.a. AO ALFA-BANK (Cyrillic: АО АЛЬФА-БАНК); a.k.a. JSC ALFA-BANK; f.k.a. OPEN JOINT STOCK COMPANY ALFA-BANK), Kalanchevskaya Street 27, Moscow 107078, Russia (Cyrillic: Ул. Каланчевская, Д.27, Город москва 107078, Russia); 27, Kalanchyovskaya Ul., Moscow 107078, Russia; SWIFT/BIC ALFARUMM; Website alfabank.ru; alt. Website alfabank.com; BIK (RU) 044525593; Organization Established Date 1990; Target Type Financial Institution; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for,

and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7728168971 (Russia); Registration Number 1027700067328 (Russia) [RUSSIA-EO14024].

3. CREDIT BANK OF MOSCOW PUBLIC JOINT STOCK COMPANY (a.k.a. CREDIT BANK OF MOSCOW (Cyrillic: МОСКОВСКИЙ КРЕДИТНЫЙ БАНК); a.k.a. CREDIT BANK OF MOSCOW PJSC (Cyrillic: ПАО МОСКОВСКИЙ КРЕДИТНЫЙ БАНК)), Lukov pereulok 2, bldg. 1, Moscow 107045, Russia; SWIFT/BIC MCRBRUMM; Website www.mkb.ru; BIK (RU) 044525659; Organization Established Date 1992; Target Type Financial Institution; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Registration ID 1027739555282 (Russia); Tax ID No. 7734202860 (Russia) [RUSSIA-EO14024].

On February 24, 2022, OFAC determined that the following entities (a) are owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation; and (b) shall be subject to the prohibitions of Directive 3 under E.O. 14024, "Prohibitions Related to New Debt and Equity of Certain Russia-related Entities." These names have been placed on OFAC's NS-MBS List.

1. PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕРБАНК РОССИИ) (f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN FEDERATION; f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC; f.k.a. OJSC SBERBANK OF RUSSIA; f.k.a. OPEN JOINT STOCK COMPANY SBERBANK OF RUSSIA; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. PJSC SBERBANK (Cyrillic: ПАО СБЕРБАНК); f.k.a. SBERBANK OF RSFSR; a.k.a. SBERBANK OF RUSSIA; a.k.a. SBERBANK ROSSII; f.k.a. SBERBANK ROSSII OAO), 19 ul. Vavilova, Moscow 117312, Russia (Cyrillic: ул. Вавилова, д. 19, Москва 117312, Russia); SWIFT/BIC SABRRUMM; Website www.sberbank.ru; alt. Website www.sberbank.com; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-

and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7707083893 (Russia); Registration Number 1027700132195 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

2. GAZPROMBANK JOINT STOCK COMPANY (Cyrillic: ГАЗПРОМБАНК АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. BANK GPB JSC; a.k.a. GAZPROMBANK AO; f.k.a. GAZPROMBANK OPEN JOINT STOCK COMPANY; f.k.a. JOINT STOCK BANK OF THE GAS INDUSTRY GAZPROMBANK), 16 Nametkina Street, Bldg. 1, Moscow 117420, Russia; SWIFT/BIC GAZPRUMM; Website www.gazprombank.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Organization Established Date 31 Jul 1990; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7744001497 (Russia); Government Gazette Number 09807684 (Russia); Registration Number 1027700167110 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

3. JOINT STOCK COMPANY RUSSIAN AGRICULTURAL BANK (a.k.a. ROSSELKHOZBANK; a.k.a. RUSSIAN AGRICULTURAL BANK; a.k.a. RUSSIAN AGRICULTURAL BANK OJSC; a.k.a. RUSSIAN AGRICULTURAL BANK OPEN JOINT STOCK COMPANY; a.k.a. "RUSAG"), 3, Gagarinsky Pereulok, Moscow 119034, Russia; 3 Gagarinsky per., Moscow 119034, Russia; SWIFT/BIC RUAGRUMM; Website http://www.rshb.ru; Executive Order 13662 Directive Determination - Subject to

Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Government Gazette Number 52750822 (Russia); Registration Number 1027700342890 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

4. PUBLIC JOINT STOCK COMPANY GAZPROM (a.k.a. GAZPROM; a.k.a. GAZPROM PAO; a.k.a. PJSC GAZPROM), 2/3 Lakhtinsky Avenue, Bldg. 1, St. Petersburg, Russia 197229, Russia; BOX 1255, St. Petersburg 190900, Russia; 156A Moskovsky Avenue, St. Petersburg, Russia; Executive Order 13662 Directive Determination - Subject to Directive 4; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7736050003 (Russia); Government Gazette Number 00040778 (Russia); Registration Number 1027700070518 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

5. PUBLIC JOINT STOCK COMPANY GAZPROM NEFT (a.k.a. GAZPROM NEFT PAO; a.k.a. GAZPROM NEFT PJSC; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO GAZPROM NEFT), 5, Let. A, Galernaya, Saint Petersburg 190000, Russia; d. 3-5 litera A Ch. Pom. 1N kab. 2401, ul. Pochtamtskaya, St. Petersburg 190000, Russia; Executive Order 13662 Directive Determination - Subject to Directive 2; alt. Executive Order 13662 Directive Determination - Subject to Directive 4; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-

and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 5504036333 (Russia); Government Gazette Number 42045241 (Russia); Registration Number 1025501701686 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

6. PUBLIC JOINT STOCK COMPANY TRANSNEFT (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ТРАНСНЕФТЬ) (f.k.a. AK TRANSNEFT OAO; f.k.a. AKTSIONERNAYA KOMPANIYA PO TRANSPORTU NEFTI TRANSNEFT PAO; a.k.a. JSC TRANSNEFT; a.k.a. OIL TRANSPORTING JOINT STOCK COMPANY TRANSNEFT; a.k.a. PAO TRANSNEFT (Cyrillic: ПАО ТРАНСНЕФТЬ); a.k.a. PJSC TRANSNEFT; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO TRANSNEFT), naberezhnaya Presnenskaya, D. 4, Str. 2, Moscow 123112, Russia (Cyrillic: Наб. Пресненская, Д. 4, СТР. 2, Город Москва 123112, Russia); Website www.transneft.ru; Executive Order 13662 Directive Determination - Subject to Directive 2; Organization Established Date 26 Aug 1993; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7706061801 (Russia); Government Gazette Number 00044463 (Russia); Registration Number 1027700049486 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

7. PUBLIC JOINT STOCK COMPANY ROSTELECOM (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО РОСТЕЛЕКОМ) (f.k.a. PAO MEZHDUGORODNOI I MEZHDUNARODNOI ELEKTRICHESKOI SVYAZI ROSTELEKOM; a.k.a. PJSC ROSTELECOM (Cyrillic: ПАО РОСТЕЛЕКОМ); a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO ROSTELEKOM;

a.k.a. PUBLICHNOE AKTSIONERNOY OBSHCHESTVO ROSTELEKOM; a.k.a. ROSTELECOM; a.k.a. ROSTELEKOM PJSC), P.O. Box: 14, 1, Tverskaya-Yamskaya Street, Moscow 125047, Russia; 30 (building 1), Goncharnaya st., Moscow 115172, Russia; d. 14 litera A, naberezhnaya Sinopskaya, St. Petersburg 191167, Russia (Cyrillic: Д. 14, ЛИТЕРА А, НАБ СИНОПСКАЯ, ВН.ТЕР.Г. МУНИЦИПАЛЬНЫЙ ОКРУГ СМОЛЬНИНСКОЕ, Г.Санкт-Петербург 191167, Russia); Organization Established Date 1993; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7707049388 (Russia); Legal Entity Number 2534001D752JPNM0H170 (Russia); Registration Number 1027700198767 (Russia) [RUSSIA-EO14024].

8. PUBLIC JOINT STOCK COMPANY RUSHYDRO (Cyrillic: ПАО РУСГИДРО) (f.k.a. FEDERAL HYDRO-GENERATING COMPANY RUSHYDRO OAO; a.k.a. FEDERAL HYDRO-GENERATING COMPANY RUSHYDRO PAO; f.k.a. GIDROOGK OAO; f.k.a. OTKRYTOE AKTSIONERNOE OBSCHESTVO FEDERALNAYA GYDROGENERIRUYUSCHAYA KOMPANIYA-RUSGYDRO; a.k.a. PUBLIC JOINT-STOCK COMPANY FEDERAL HYDRO-GENERATING COMPANY - RUSHYDRO (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ФЕДЕРАЛЬНАЯ ГИДРОГЕНЕРИРУЮЩАЯ КОМПАНИЯ - РУСГИДРО); a.k.a. PUBLICHNOE AKTSIONERNOE OBSCHESTVO FEDERALNAYA GYDROGENERIRUYUSCHAYA KOMPANIYA-RUSGYDRO; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO FEDERALNAYA GIDROGENERIRUYUSHCHAYA KOMPANIYA - RUSGIDRO; a.k.a. RUSGIDRO, PAO), 51, Republic Street, Kedrovyy, Russia; d. 43 k. 1, ul. Dubrovinskogo, Krasnoyarsk, Krasnoyarski Kr. 660017, Russia (Cyrillic: Д. 43, К. 1, УЛ. ДУБРОВИНСКОГО, Г. КРАСНОЯРСК, КРАСНОЯРСКИЙ КРАЙ 660017, Russia); 23 Pravda St, Moscow 127015, Russia; Mail Box No. 54, Moscow 127137, Russia; Organization Established Date 2004; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such

new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 2460066195 (Russia); Legal Entity Number 2534005TJN9DX4YWVT97 (Russia); Registration Number 1042401810494 (Russia) [RUSSIA-EO14024].

9. PUBLIC JOINT STOCK COMPANY ALROSA (Cyrillic: АКЦИОНЕРНАЯ КОМПАНИЯ АЛРОСА ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. AK ALROSA PAO (Cyrillic: АК АЛРОСА ПАО); a.k.a. ALROSA GROUP; a.k.a. PJSC ALROSA), 24 Ozerkovskaya Naberezhnaya, Moscow 115184, Russia; 6 ulitsa Lenina, Mirny, Republic of Sakha (Yakutia) 678174, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 1433000147 (Russia); Legal Entity Number 894500DKUWVBYZLLE651 (Russia); Registration Number 1021400967092 (Russia) [RUSSIA-EO14024].

10. JOINT STOCK COMPANY SOVCOMFLOT (a.k.a. JSC SOVCOMFLOT; a.k.a. PAO SOVCOMFLOT; a.k.a. PUBLICHNOE AKTSIONERNOE OBSCHESTVO SOVREMENNYY KOMMERCHESKIY FLOT), Ul. Gasheka D. 6, Moscow 125047, Russia; Nab. Reki Moiki d.3, Lit. A, Saint Petersburg 191186, Russia; Website sovcomflot.ru; alt. Website www.scf-group.com; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7702060116 (Russia); Registration Number 1027739028712 (Russia) [RUSSIA-EO14024].

11. OPEN JOINT STOCK COMPANY RUSSIAN RAILWAYS (Cyrillic: ОТРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ

ДОРОГИ) (a.k.a. JSC RUSSIAN RAILWAYS (Cyrillic: ОАО РОССИЙСКИЕ ЖЕЛЕЗНЫЕ ДОРОГИ); a.k.a. RUSSIAN RAILWAYS; a.k.a. RUSSIAN RAILWAYS JSC; a.k.a. "JSC RZD"; a.k.a. "RZHD" (Cyrillic: "ОАО РЖД")), Novaya Basmannaya Street, 2, Moscow 107174, Russia (Cyrillic: ул. Новая Басманная.д.2, Москва 107174, Russia); Website www.rzd.ru; Organization Established Date 18 Sep 2003; Target Type Government Entity; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7708503727 (Russia); Legal Entity Number 253400XX5U3XALBF5728 (Russia); Registration Number 1037739877295 (Russia) [RUSSIA-EO14024].

Dated: February 24, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–04337 Filed 3–1–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8936

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Qualified Plug-In Electric Drive Motor Vehicle Credit.

DATES: Written comments should be received on or before May 2, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include ''OMB Number 1545–2137-Qualified Plug-In Electric Drive Motor Vehicle Credit'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Plug-in Electric Drive Motor Vehicle Credit (Notice 2009–89, as modified by Notice 2012–54).

OMB Number: 1545–2137.

Form Number: 8936.

Abstract: Notice 2009–54 sets forth interim guidance, pending the issuance of regulations, relating to the qualified plug-in electric drive motor vehicle credit under section 30D of the Internal Revenue Code, as in effect for vehicles acquired after December 31, 2009. Notice 2012–54 modifies Notice 2009–89, by providing a new address to which a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) must send vehicle certifications and quarterly reports under Notice 2009–89.

Form 8936 is used for tax years beginning after 2008, to figure the credit for qualified plug-in electric drive motor vehicles placed in service during your tax year. The credit attributable to depreciable property (vehicle used for business or investment purposes) is treated as a general business credit. Any credit not attributable to depreciable property is treated as a personal credit.

Current Actions: There are no changes being made to the burden associated with the collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual, Businesses, and other for-profit organizations.

Notice 2012–54

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 23 hrs.

Estimated Total Annual Burden Hours: 280.

Form 8936

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hrs., 35 mins.

Estimated Total Annual Burden Hours: 2,675.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–04383 Filed 3–1–22; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction of the Multifunctional Expansion of Dry Dock 1 at Portsmouth Naval Shipyard, Kittery, Maine; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB652]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction of the Multifunctional Expansion of Dry Dock 1 at Portsmouth Naval Shipyard, Kittery, Maine

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

ACTION: Notice; proposed incidental harassment authorization request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 at Portsmouth Naval Shipyard in Kittery, Maine. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 31, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Egger@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHA with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which NMFS has not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

NMFS will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 2, 2021, NMFS received a request from the Navy for an IHA to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project (also referred to as P–831) at Portsmouth Naval Shipyard in Kittery, Maine. The Navy submitted a revised version of the application on December 21, 2021. The application was deemed adequate and complete on February 10, 2022. The Navy's request is for take of harbor porpoises, harbor seals, gray seals, harp seals, and hooded seals by Level A harassment and Level B harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity; therefore, an IHA is appropriate.

NMFS previously issued IHAs and renewals to the Navy for waterfront improvement work in Portsmouth, in 2017 (81 FR 85525; November 28, 2016), 2018 (83 FR 3318; January 24, 2018), 2019 (84 FR 24476, May 28, 2019), a renewal of the 2019 IHA (86 FR 14598; March 17, 2021), and a 2021 IHA (86 FR 30418; June 8, 2021) As required, the applicant provided monitoring reports (available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) which confirm that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

This proposed IHA would cover 1 year of a larger project for which the Navy intends to request a take authorization for subsequent facets of the project. The larger overall expansion

and modification of Dry Dock 1 project involves modification of the super flood basin to create two additional dry docking positions (Dry Dock 1 North and Dry Dock 1 West) in front of the existing Dry Dock 1 East. Year 1 construction activities will focus on the preparation of the walls and floors of the super flood basin to support the placement of the monoliths and the construction of the two dry dock positions. The Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs they provided for other preparatory work related to the Dry Dock 1 project and information regarding their monitoring results may be found in the Estimated Take section.

Description of Proposed Activity

Overview

Multifunctional Expansion of Dry Dock 1 (P–381) is one of three projects that support the overall expansion and modification of Dry Dock 1, located in the western extent of the shipyard. The previous two projects, construction of a super flood basin (P–310) and extension of portal crane rail and utilities (P–1074) are currently under construction. Work associated with P–310 and P–1074 has been and/or is being completed under the separate IHAs issued by NMFS. The projects have been phased to support Navy mission schedules. P–381 will be constructed within the same footprint of the super flood basin over an approximated 7-year period. In-water activities are expected to occur within the first 5 years, between April 2022 and April 2027. This IHA request is for the first year of in-water construction for P–381 occurring from April 2022 through April 2023. All work beyond year 1 is anticipated to be requested in a rulemaking/Letter of Authorization (LOA) application submission to NMFS.

The purpose of the proposed project, Multifunctional Expansion of Dry Dock 1 (P–381), is to modify the super flood basin to create two additional dry docking positions (Dry Dock 1 North and Dry Dock 1 West) in front of the existing Dry Dock 1 East. The super flood basin provides the starting point for the P–381 work (see Figure 1–2 of the application).

Year 1 construction activities will focus on the preparation of the walls and floors of the super flood basin to support the placement of the monoliths and the construction of the two dry dock positions. The primary work needed to prepare the super flood basin involves structural reinforcement of the existing berths and floor within the super flood basin, bedrock removal, and demolition of portions of the super flood basin walls. Most of the preparatory work will occur behind the existing super flood basin walls that would act as a barrier to sound and would contain underwater noise to within a small portion of the Piscataqua River (see Figure 1–3 of the application). Construction activities that could affect marine mammals are limited to in-water pile driving and removal activities, rock hammering, rotary drilling, and down-the-hole (DTH) hammering.

Dates and Duration

The construction activities are anticipated to begin in March 2022 and proceed to March 2023. In-water construction activities would occur for 365 days over a period of approximately 12 consecutive months. All in-water work capable of producing noise harmful to marine mammals will be limited to daylight hours. Pile driving days are not necessarily consecutive and certain activities may occur at the same time, decreasing the total number of in-water construction days. The contractor could be working in more than one area of the berths at a time. It is not possible to predict if and/or how often work will occur simultaneously, but it is estimated that overlapping activities would permit the work described in Table 1 to be completed within one calendar year. Table 1 provides the estimated construction schedule and production rates for P–381 Year 1 construction activities. Table 1 reflects the current pile driving, hammering, and drilling durations for activities occurring in Year 1 included in this request for incidental take authorization. Vibratory pile driving and extraction is assumed to occur during 84 days of Year 1. Impact pile driving will occur during 24 days in Year 1. DTH activities would occur for 919 days and rotary drilling would occur for 282 days. Rock hammering would occur for 252 days. Overlapping activities are estimated to reduce the number of construction days by 1,172 days for a total of 365 construction days.

TABLE 1—PILE DRIVING AND DRILLING DURATIONS
[March 2022–March 2023]

Activity	Total amount and estimated dates	Activity component	Method	Daily production rate	Total production days
Center Wall—Install Foundation Support Piles.	38 drilled shafts, Mar-22 to Mar-23	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day, 1 hour/day.	38
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day, 9 hours/day.	38
		Remove 102-inch outer casing	Rotary Drill	1 casing/day, 15 minutes/casing.	38
		Drill 78-inch diameter shaft	Cluster drill DTH	6.5 days/shaft, 10 hours/day.	247
Center Wall—Install Diving Board Shafts.	18 drilled shafts, Mar-22 to Mar-23	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day, 1 hour/day.	18
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day, 9 hours/day.	18
		Remove 102-inch outer casing	Rotary Drill	1 casing/day, 15 minutes/casing.	18
		Drill 78-inch diameter shaft	Cluster drill DTH	6.5 days/shaft, 10 hours/day.	117
Center Wall—Access Platform Support.	38 drilled shafts, Mar-22 to Mar-23	Install 102-inch diameter outer casing.	Rotary Drill	1 shaft/day, 1 hour/day.	38
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day, 9 hours/day.	38
		Remove 102-inch outer casing	Rotary Drill	1 casing/day, 15 minutes/casing.	38
		Drill 78-inch diameter shaft	Cluster drill DTH	3.5 days/shaft, 10 hours/day.	133
Center Wall—Temporary Launching Piles.	6 drilled shafts, Mar-22 to Apr-22	42-inch diameter shaft	Mono-hammer DTH.	1 shaft/day, 10 hours/day.	6

TABLE 1—PILE DRIVING AND DRILLING DURATIONS—Continued
[March 2022–March 2023]

Activity	Total amount and estimated dates	Activity component	Method	Daily production rate	Total production days
Center Wall Tie Downs	Install 36 rock anchors, Mar-22 to Mar-23.	9-inch diameter holes	Mono-hammer DTH.	2 holes/day, 5 hours/hole.	18
Center Wall—Access Platform Tie Downs.	Install 18 rock anchors, Mar-22 to Mar-23.	9-inch diameter holes	Mono-hammer DTH.	2 holes/day, 5 hours/hole.	9
Center Wall—Install Tie-In to Existing West Closure Wall.	16 sheet piles, Mar-22 to Mar-23+	28-inch wide Z-shaped sheets	Impact with initial vibratory set.	4 piles/day, 5 minutes and 300 blows/pile.	*4
Berth 11 End Wall—Install Secant Pile Guide Wall.	60 sheet piles, Feb-22 to Mar-23	28-inch wide Z-shaped sheets	Impact with initial vibratory set.	8 piles/day, 5 minutes and 300 blows/pile.	8
Berth 1—Remove Granite Block Quay Wall.	610 cy, May-22 to Mar-23+	Granite block demolition	Hydraulic rock hammering.	2.5 hours/day	*10
P–310 West Closure Wall—Remove Closure Wall.	238 sheet piles, Aug-22 to Oct-22	18-inch wide flat- sheets	Vibratory extraction.	4 piles/day, 5 minutes/pile.	60
P–310 West Closure Wall—Mechanical Rock Excavation.	985 cy, Nov-22 to Feb-23	Excavate bedrock	Hydraulic rock hammering.	9 hours/day	77
P–310 West Closure Wall—Mechanical Rock Excavation.	Drill 500 relief holes, Nov-22 to Feb-23.	4–6 inch holes	Mono-hammer DTH.	25 holes/day, 24 minutes/hole.	20
	Drill 46 rock borings (50 cy), May-22 to Jun-22.	42-inch diameter casing	Mono-hammer DTH.	2 borings/day, 5 hours/boring.	[1] 24
West closure wall—Berth 11 Abutment—Install Piles.	Drill 28 shafts, Aug-22 to Mar-23	42-inch diameter casing	Mono-hammer DTH.	1 shaft/day, 10 hours/day.	28
Berth 11—Remove Shutter Panels	112 panels, Oct-22 to Mar-23+	Demolish shutter panels	Hydraulic rock hammering.	5 hours/day	*56
Berth 11 Face—Mechanical Rock Removal at Basin Floor.	3,500 cy, Oct-22 to Mar-23+	Excavate Bedrock	Hydraulic rock hammering.	12 hours/day	*100
	Drill 2,201 relief holes, Oct-22 to Mar-23+.	4–6 inch holes	Mono-hammer DTH.	27 holes/day, 22.2 minutes/hole.	*82
Berth 11 Face—Mechanical Rock at Abutment.	Drill 365 rock borings (1,220 cy), Jul-22 to Jan-23.	42-inch diameter casing	Mono-hammer DTH.	2 borings/day, 5 hours/boring.	183
Dry Dock 1 North Entrance—Drill Tremie Tie Downs.	Drill 100 rock anchors, Jan-23 to Mar-23.	9-inch holes	Mono-hammer DTH.	2 holes/day, 2 hours/hole.	[1] 52
Dry Dock 1 North Entrance—Install Temporary Cofferdam.	Install 96 sheet piles, Dec-22 to Mar-23.	28-inch wide Z-shaped sheets	Impact with initial vibratory set.	8 sheets/day, 5 minutes and 300 blows/pile.	12
Berth 1—Remove Sheet Piles	Remove 12 sheet piles, Mar-23+	25-inch wide Z-shaped sheets	Hydraulic rock hammering.	6 hours/day	*3
Berth 1 Top of Wall—Demolition For Waler Installation.	30 lf+, Mar-23+	Mechanical concrete demolition	Hydraulic rock hammering.	10 hours/day	*6
Totals	539 shafts/borings, 2,855 holes/anchors,422 sheet piles.				1,537

+ These activities may continue into subsequent construction years pursuant to a proposed authorization.
* These activities will begin in year 1 of this IHA request and may continue into following construction years pursuant to a proposed authorization. Only the number of production days occurring in year 1 are presented.

Specific Geographic Region

The shipyard is located in the Piscataqua River in Kittery, Maine. The Piscataqua River originates at the boundary of Dover, New Hampshire, and Eliot, Maine (see Figure 1 below). The river flows in a southeasterly direction for 2,093 meters (m) (13 miles (mi)) before entering Portsmouth Harbor and emptying into the Atlantic Ocean. The lower Piscataqua River is part of the Great Bay Estuary system and varies in width and depth. Many large and small islands break up the straight-line flow of the river as it continues toward the Atlantic Ocean. Seavey Island, the location of the proposed activities, is located in the lower Piscataqua River approximately 500 m from its southwest bank, 200 m from its north bank, and approximately 4,000 m (2.5 mi) from the mouth of the river.

Water depths in the proposed project area range from 6.4 m (21 feet (ft) to 11.9 m (39 ft) at Berths 11, 12, and 13. Water depths in the lower Piscataqua River near the proposed project area range from 15 ft in the shallowest areas to 69 ft in the deepest areas. The river is approximately 914 m (3,300 ft) wide near the proposed project area, measured from the Kittery shoreline north of Wattlebury Island to the Portsmouth shoreline west of Peirce Island. The furthest direct line of sight from the proposed project area would be 1,287 m (0.8 mi) to the southeast and 418 m (0.26 mi) to the northwest.

Much of the shoreline in the proposed project area is composed of hard shores (rocky intertidal). In general, rocky intertidal areas consist of bedrock that alternates between marine and terrestrial habitats, depending on the tide (Department of the Navy 2013). Rocky intertidal areas consist of ''bedrock, stones, or boulders that singly or in combination cover 75 percent or more of an area that is covered less than 30 percent by vegetation'' (Navy 2013).

The lower Piscataqua River is home to Portsmouth Harbor and is used by commercial, recreational, and military vessels. Between 150 and 250 commercial shipping vessels transit the lower Piscataqua River each year (Magnusson *et al.* June 2012). Commercial fishing vessels are also very common in the river year-round, as are recreational vessels, which are more common in the warmer summer months. The shipyard is a dynamic industrial facility situated on an island with a narrow separation of waterways between the installation and the communities of Kittery and Portsmouth (see Figure 2). The predominant noise sources from Shipyard industrial operations consist of dry dock cranes; passing vessels; and industrial equipment (*e.g.,* forklifts, loaders, rigs, vacuums, fans, dust collectors, blower

belts, heating, air conditioning, and ventilation (HVAC) units, water pumps, and exhaust tubes and lids). Other components such as construction, vessel ground support equipment for maintenance purposes, vessel traffic across the Piscataqua River, and vehicle traffic on the shipyard's bridges and on local roads in Kittery and Portsmouth produce noise, but such noise generally represents a transitory contribution to the average noise level environment (Blue Ridge Research and Consulting (BRRC) 2015; ESS Group 2015). Ambient sound levels recorded at the shipyard are considered typical of a large outdoor industrial facility and vary widely in space and time (ESS Group 2015).

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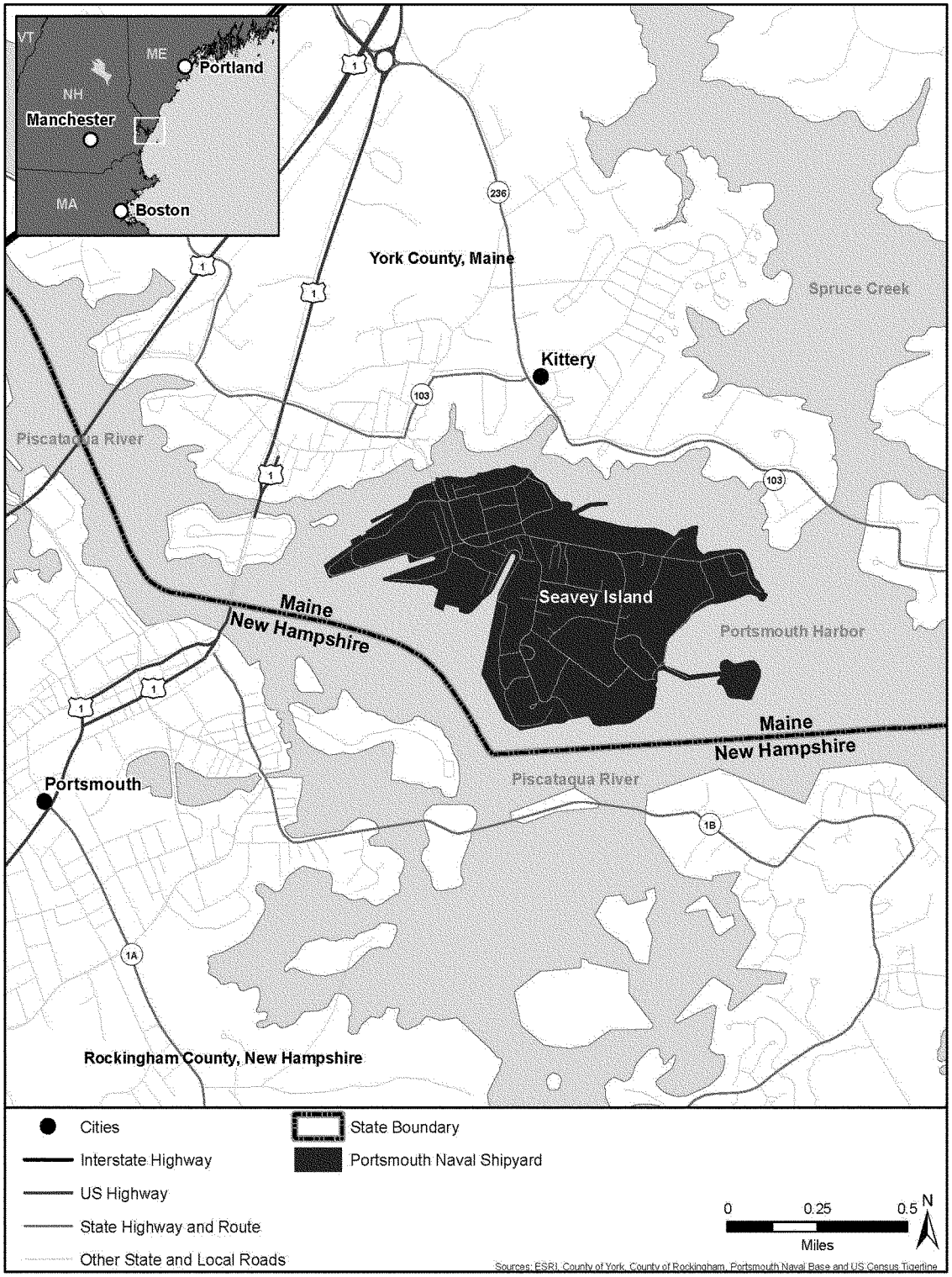

Figure 1--Site Location Map of the Project Area

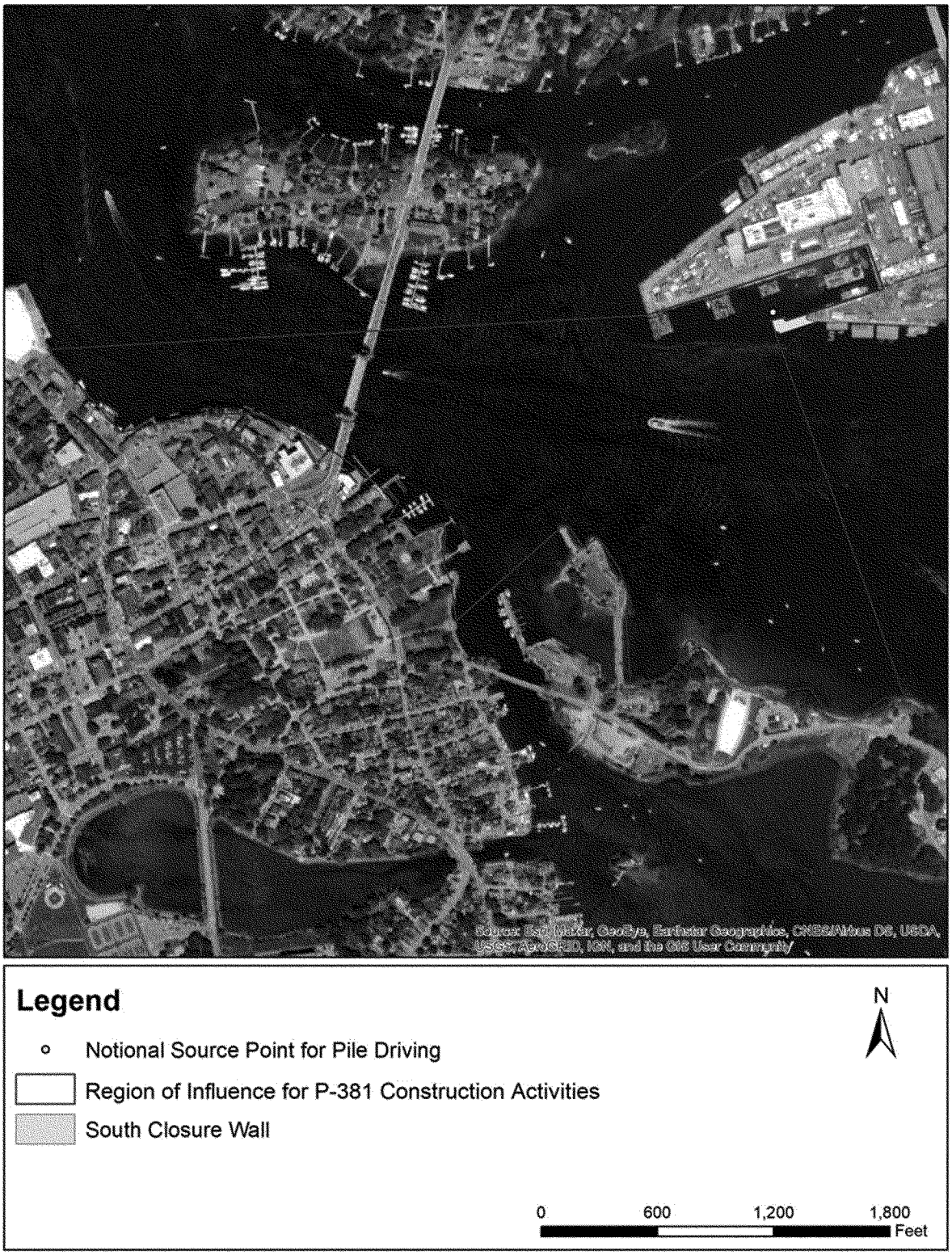

Figure 2--Region of Influence for Underwater Noise for P-381 Year 1 In-water Construction Activities

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Detailed Description of Specific Activity

Preparatory work for P–381 in Year 1 as proposed for this IHA can be generally grouped into four categories: center wall support and tie-in, structural reinforcement of super flood basin sidewalls and entrance, mechanical bedrock removal, and demolition of super flood basin wall components. Each category involves one or more activities expected to result in harassment of marine mammals.

Center wall support and tie-in—The location of the future center wall requires reinforcement to allow placement of the large pre-cast monolith structures forming the separation between the two new dry docking positions. Specifically, the floor of the existing basin must be able to provide an adequate foundation for the pre-cast monoliths that will make up the dry dock interiors and center wall. The basin floor will be reinforced by 38, 84-inch (in) diameter shafts throughout the footprint of the center wall that will be filled with concrete to create the structural support piles for the center wall. The shafts will be installed using a cluster drill consisting of multiple down-the-hole (DTH) hammers.

Preparations for the center wall also require the installation of a relatively short length of sheet pile wall to create a connection between the existing west closure wall and the center wall. In construction year 1, 16, 28-in wide, Z-shaped sheet piles would be installed for the tie-in on the westerly end of the center wall footprint where it will connect to the west closure wall structure. The sheet piles will be installed using an initial vibratory set followed by driving with impact hammers. The remaining sheet piles will be proposed for installation in the following construction years and described in the subsequent rulemaking/LOA application.

Structural reinforcement of super flood basin sidewalls and entrance—The existing super flood basin walls must be reinforced to allow adjacent bedrock removal and to provide support for the future dry dock walls. Bedrock removal is required to establish the deeper floor elevations needed for the project. The existing walls must be reinforced to prevent undermining during rock removal which could cause the walls to collapse.

Wall reinforcement activities will include the installation of a sheet pile guide wall along the Berth 11 end wall. The guide wall will support the installation of an adjacent secant pile structural support wall that will be installed landside. In construction year 1, 24, 28-in, Z-shaped sheet piles will be installed for the guide wall. The guide wall sheet piles will be placed using an initial vibratory set followed by driving with impact hammers. The remaining guide wall sheet piles will be proposed for installation in the following construction years and described in the subsequent rulemaking/LOA application.

The conversion of the existing west closure wall to the Dry Dock 1 North entrance requires reinforcement of the section of the west closure wall that will become the new dry dock entrance. The existing structure will be reinforced by drilling shafts through its interior into the underlying bedrock. The shafts will be filled with concrete to create structural piles. This activity will not occur in the water and will not create underwater noise impacts. The structure will then be surrounded by a temporary cofferdam. In construction Year 1, the cofferdam base will be constructed with 24, 28-in wide, Z-shaped sheet piles. The sheet piles will be installed using an initial vibratory set followed by driving with impact hammers. The remainder of cofferdam construction will be proposed in the following construction years and described in the subsequent rulemaking/LOA application.

Additional preparatory work in the west closure wall area involves the installation of support tie downs for future tremie concrete work. The tie downs require the placement of an estimated 51 rock anchors requiring 9-in diameter holes. The rock anchors will be installed using a rotary drill.

Along the northern section of the west closure wall, at its junction with Berth 11, reinforcement piles will be installed to strengthen the abutment area. The reinforcement piles will be constructed by drilling 28, 42-in diameter shafts that will be filled with concrete to create a pile wall. The shafts will be constructed using a DTH cluster drill.

Mechanical bedrock removal—Bedrock will be mechanically excavated using various methods appropriate for the removal location and as needed to avoid damage to adjacent structures. Bedrock removal is required in several locations throughout the basin area. Three methods of rock removal will be employed that may result in injury or harassment of marine mammals:

- Bedrock excavation with a hydraulic rock hammer (*i.e.,* hoe ram or breaker)
- Installation of relief holes (4- to 6-in diameter) using a DTH drill
- Removal of rock using DTH drilling with 36-in cluster drill

Two primary areas of mechanical rock removal are scheduled for Year 1 of the project: The west closure wall footprint and the Berth 11 face. Both sites require the use of the three methods presented in the bulleted list above.

Preparation of the west closure wall area requires the removal of bedrock with a hydraulic hammer along with the DTH drilling 500, 4–6 in diameter relief holes and the drilling of 19 rock borings with a 36-in diameter DTH cluster drill. Approximately 905 cubic yards (cy) of bedrock are anticipated to be removed from the west closure wall area.

Bedrock removal is also required along the Berth 11 face. Again, the rock will be removed with a hydraulic hammer: By drilling 351, 4–6-in diameter relief holes plus drilling 8 rock borings with 36-in diameter DTH cluster drill. Approximately 415 cy of bedrock are anticipated to be removed during construction Year 1. The remaining bedrock will be proposed for removal in the following construction years and described in the rulemaking/subsequent LOA application.

Demolition of super flood basin wall components—Demolition of existing wall structures includes the removal of shutter panels, granite quay walls, sheet piles, and concrete making up the super flood basin. Demolition of existing wall structures would largely be conducted using a rock hammer but some features would be removed by torch cutting. Torch cutting would not generate noise that would be harmful to marine mammals and therefore not discussed further.

Portions of the basin west closure wall will be demolished by extracting the sheet piles with a vibratory hammer. 238, 18-in wide, flat sheet piles will be removed.

Sections of the existing concrete shutter panels making up the face of Berth 11 will be removed with a hydraulic rock hammer. Approximately112 panels would be removed in construction Year 1. The remaining shutter panels will be proposed for removal in the following construction years and described in the rulemaking/subsequent LOA that application.

Berth 1 demolition includes removal of the existing sheet pile wall and portions of the underlying granite block quay wall. In construction year 1, 12, 25-in wide, Z-shaped sheet piles and approximately 610 cy of granite would be removed. The sheet piles and the granite block quay wall will be removed with a hydraulic rock hammer with the remaining sheet piles and granite blocks proposed for removal in the following construction years and described in the subsequent rulemaking/LOA application.

A section of Berth 1 requires the installation of a waler (steel beam) for structural support. To accommodate the waler, about 9.144 m (30 linear ft) of concrete wall will be removed using a hydraulic rock hammer in construction Year 1 with the remaining concrete wall proposed for removal in the following construction years and described in the subsequent rulemaking/LOA application.

Overall Noise Producing Activities

Two types of piles will be installed or removed with pile driving equipment during construction Year 1: 28-in wide, Z-shaped sheet piles and 18-in wide, flat sheet piles. The installation of 28-in wide, Z-shaped steel sheets would use a combination of vibratory and impact hammers, whereas the removal of 18-in wide, flat sheet piles would use only vibratory hammers.

Pile installation/removal would occur using barge mounted cranes equipped with both vibratory and impact hammers. Piles would be installed initially using vibratory means and then finished with impact hammers, if necessary. Impact hammers would also be used to push obstructions out of the way and where sediment conditions do not permit the efficient use of vibratory hammers. To the extent practicable, it is assumed that the piles installed for this project would be set with a vibratory hammer and then finished with an impact hammer in order to reach bearing depth or to have the required load-bearing capacity if installed using vibratory methods only. Pile removal activities would use vibratory hammers exclusively.

The removal of bedrock and the demolition of concrete shutter panels and granite blocks during construction Year 1 would be by mechanical means. These features would be demolished using a hydraulic rock hammer or hoe ram (a portion of bedrock removal would also use DTH mono hammers and cluster drilling).

Two methods of rock excavation would be used during construction Year 1: rotary drill and DTH excavation. DTH excavation using mono-hammers would be used for bedrock removal, to create shafts for support piles and tie downs, and for the excavation of relief holes during mechanical bedrock removal. For the largest shafts (greater than 42-in in diameter) DTH excavation would use a cluster drill. A cluster drill uses multiple mono-hammers within a single bit to efficiently break up bedrock and create large diameter holes. Rotary drilling is considered an intermittent, non-impulsive noise source, similar to vibratory pile-driving.

Concurrent Activities

In order to maintain project schedules, it is likely that multiple pieces of equipment would operate at the same time within the basin. Given the spatial constraints of the project area, a maximum of five pieces of equipment could potentially operate in the project area at a single time. Table 2 provides a summary of possible equipment combinations that could be used simultaneously over the course of the construction year. An analysis of concurrent activities with respect to noise generation from multiple sources is provided in the Estimated Take section.

TABLE 2—SUMMARY OF MULTIPLE EQUIPMENT SCENARIOS

Quantity	Equipment
2	Rotary Drill (2).
2	Cluster Drill (1), Rotary Drill (1).
2	Cluster Drill (2).
3	Cluster Drill (2), Vibratory Hammer (1).
5	Cluster Drill (2), Vibratory Hammer (1), Mono-hammer DTH(1), Rotary Drill (1).
4	Cluster Drill (1), Rock Hammering (1), Mono-hammer DTH (1), Rotary Drill (1).
2	Mono-hammer DTH (1), Rock Hammer (1).
3	Mono-hammer DTH (1), Rock Hammer (2).

Source: 381 Constructors 2021.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species with expected potential for occurrence in the Piscataqua River in Kittery, Maine, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, NMFS follows Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic Marine Mammal SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the final 2020 SARs (Hayes *et al.,* 2021) and draft 2021 SARs, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 3—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales)						
Family Phocoenidae (porpoises):						

TABLE 3—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	-;N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-;N	61,336 (0.08, 57,637; 2018)	1,729	339
Gray seal	*Halichoerus grypus*	Western North Atlantic	-;N	27,300 [4] (0.22; 22,785; 2016)	1,389	4,453
Harp seal	*Pagophilus groenlandicus*	Western North Atlantic	-;N	7,600,000 (unk,7,100.000, 2019)	426,000	178,573
Hooded seal	*Cystophora cristata*	Western North Atlantic	-;N	593,500	Unknown	1,680

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region#reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] This abundance value and the associated PBR value reflect the US population only. Estimated abundance for the entire Western North Atlantic stock, including animals in Canada, is 451,600. The annual M/SI estimate is for the entire stock.

All species that could potentially occur in the proposed action area are included in Table 2. More detailed descriptions of marine mammals in the PNSY project area are provided below.

Harbor Porpoise

Harbor porpoises occur from the coastline to deep waters (≤1800 m); Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Hayes *et al.,* 2020). In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoise may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016).

The Navy has been collecting data on marine mammals in the Piscataqua River since 2017 through construction monitoring and non-construction related monthly surveys (2017–2018). Three harbor porpoises were observed travelling quickly through the river channel during marine mammal monitoring conducted between April and December 2017 in support of the Berth 11 Waterfront Improvements Project (Cianbro 2018a). Two harbor porpoises were observed during construction monitoring that occurred between January 2018 and January 2019 (Cianbro 2018b; Navy 2019). One harbor porpoise was observed in March 2017 during non-construction related surveys conducted on 12 days (one per month) in 2017, and two harbor porpoises (one in August and one in November) were observed in monthly surveys conducted in 2018 (Naval Facilities Engineering Systems Command (NAVFAC) Mid-Atlantic 2018, 2019b). There was one sighting of harbor porpoise during P–310 year 1 monitoring events (May through December 2020) (NAVFAC 2021). To date, no harbor porpoise have been sighted in calendar year 2021 (Stantec 2021).

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30°N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Hayes *et al.,* 2020). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME (Waring *et al.,* 2016).

Harbor seals are the most abundant pinniped in the Piscataqua River. The majority of harbor seals occur along the Maine coast with a large portion of them hauling out at the Isles of Shoals (see Figure 4–1 of the application). Pupping season for harbor seals is May to June. No harbor seal pups were observed during the surveys (Cianbro 2018a, b) as pupping sites are north of the Maine-New Hampshire border (Waring *et al.* 2016). During construction monitoring between the months of April and December 2017, 199 harbor seals were observed (Cianbro 2018a) in the project area. A total of 249 harbor seals were observed during construction monitoring between the months of January 2018 and January 2019 (Navy 2019). The primary behaviors observed during monitoring were milling that occurred almost 60 percent of the time followed by swimming and traveling by the proposed project area at 29 percent and 12 percent, respectively (Cianbro 2018a). A total of 17 and 83 harbor seals were observed during the one-day monthly surveys conducted in 2017 and 2018, respectively (NAVFAC Mid-Atlantic 2018, 2019b). Between May and December of 2020 (NAVFAC 2021), 721 harbor seals were sighted during construction monitoring (NAVFAC 2021). A total of 302 harbor seals have been observed during construction monitoring of the project area between January 2021 and November 2021 (Stantec 2021).

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the project area belong to the western North Atlantic stock. The range for this stock is from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic Exclusive Economic Zone (EEZ) (Hayes *et al.,* 2020). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Hayes *et al.,* 2018). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Hayes *et al.,* 2018).

There were 24 gray seals observed within the proposed project area between the months of April and December 2017 (Cianbro 2018a) and a total of 12 observed during the January 2018 to January 2019 construction monitoring period (Navy 2019). Ten of

the 12 observation occurred during the winter months. (Navy 2019). The primary behavior observed during surveys was milling at just over 60 percent of the time followed by swimming within and traveling through the proposed project area. Gray seals were observed foraging approximately 5 percent of the time (Cianbro 2018a). The one-day monthly marine mammal surveys during 2017 and 2018 recorded six and three sightings, respectively, of gray seal (NAVFAC Mid-Atlantic 2018, 2019b). A total of 47 gray seals were observed during P–310 Year 1 monitoring events from May through December 2020 (NAVFAC 2021). Pupping season for gray seals is December through February. No gray seal pups were observed during the surveys (Cianbro 2018a, b) as pupping sites for gray seals (like harbor seals) are north of Maine-New Hampshire border (Waring et al. 2016). In 2021, monitoring activities have sighted 9 gray seals thus far (Stantec 2021).

Hooded Seal

Hooded seals are also members of the true seal family (*Phocidae*) and are generally found in deeper waters or on drifting pack ice. The world population of hooded seals has been divided into three stocks, which coincide with specific breeding areas, as follows: 1) Northwest Atlantic, 2) Greenland Sea, and 3) White Sea (Waring *et al.,* 2020). The hooded seal is a highly migratory species, and its range can extend from the Canadian arctic to Puerto Rico. In U.S. waters, the species has an increasing presence in the coastal waters between Maine and Florida (Waring *et al.,* 2019). In the U.S., they are considered members of the western North Atlantic stock and generally occur in New England waters from January through May and further south in the summer and fall seasons (Waring *et al.,* 2019).

Hooded seals are known to occur in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal. Anecdotal sighting information indicates that two hooded seals were observed from the Shipyard in August 2009, but no other observations have been recorded (Trefry November 20, 2015). Hooded seals were not observed during marine mammal monitoring or survey events that took place in 2017, 2018, and 2020 (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019; NAVFAC 2021). To date no hooded seals have been sighted in 2021 (Stantec 2021).

Harp Seal

The harp seal is a highly migratory species, its range extending throughout the Arctic and North Atlantic Oceans. The world's harp seal population is separated into three stocks, based on associations with specific locations of pagophilic breeding activities: (1) Off eastern Canada, (2) on the West Ice off eastern Greenland, and (3) in the White Sea off the coast of Russia. The largest stock, which includes two herds that breed either off the coast of Newfoundland/Labrador or near the Magdelan Islands in the Gulf of St. Lawrence, is equivalent to the western North Atlantic stock. Harp seals that occur in the United States are considered members of the western North Atlantic stock and generally occur in New England waters from January through May (Waring *et al.,* 2020).

Harp seals are known to occur in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal and were last documented in the river in May of 2020 (Stantec 2020). Two harp seals were sighted on two separate occasions (on May 12 and May 14, 2020) during construction monitoring for P–310 (NAVFAC 2021). No pile driving was occurring at the time of the sighting. Previous to that, the last harp seal sighting was in 2016 (NAVFAC Mid-Atlantic 2016; NMFS 2016b). Harp seals were not observed during marine mammal monitoring or survey events that took place in 2017 and 2018 (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019). To date no harp seals have been sighted in 2021 (Stantec 2021).

Unusual Mortality Events (UMEs)

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event was declared a UME, but it is now considered non-active and pending closing. Information on this UME is available online at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 4—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Five marine mammal species (one cetacean and four pinniped (all phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. The only cetacean species that may be present, the harbor porpoise, is classified as a high-frequency cetacean.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs) (the sound force per unit area), sound is referenced in the context of underwater sound pressure to one microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient

noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Description of Sounds Sources

In-water construction activities associated with the project would include impact and vibratory pile installation and removal, rotary drilling, DTH, and rock hammering. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive (defined below). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (American National Standards Institute standards (ANSI) 1986; Harris 1998; National Institute for Occupational Safety and Health (NIOSH) 1998; International Organization for Standardization (ISO) 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of impulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the Navy's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving or drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary.

As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability

(Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012) and Finneran (2015).

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly

replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul-out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and the haulout sites (on the opposite side of the island where activities are occuring). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Potential Effects on Marine Mammal Habitat

Water quality—Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect will occur during the installation of piles and bedrock removal when bottom sediments are disturbed. The installation of piles and bedrock removal an will disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. Using available information collected from a project in the Hudson River, pile driving activities are anticipated to produce total suspended sediment (TSS) concentrations of approximately 5.0 to 10.0 mg/L above background levels within approximately 300 feet (91 meters) of the pile being driven (Federal Highway Administration (FHWA) 2012). During pile extraction, sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton 1993). The TSS levels expected for pile driving or removal (5.0 to 10.0 mg/L) are below those shown to have adverse effects on fish (580.0 mg/L for the most sensitive species, with 1,000.0 mg/L more typical) and benthic communities (390.0 mg/L (Environmental Protection Agency 1986)).

Impacts to water quality from DTH mono-hammers are expected to be similar to those described for pile driving. Impacts to water quality would be localized and temporary and would have negligible impacts on marine mammal habitat. The cluster drill system and rotary drilling of shafts would have negligible impacts on water quality from sediment resuspension because the system would operate within a casing set into the bedrock. The cluster drill would collect excavated material inside of the apparatus where it would be lifted to the surface and placed onto a barge for subsequent disposal.

Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary.

Overall effects of turbidity and sedimentation are expected to be short-term, minor, and localized. Currents are strong in the area and, therefore, suspended sediments in the water column should dissipate and quickly return to background levels. Following the completion of sediment-disturbing activities, the turbidity levels are expected to return to normal ambient levels following the end of construction. In general, the area likely impacted by the project is relatively small compared to the available habitat in Great Bay Estuary.

Effects on Potential Prey—Sound may affect marine mammals through impacts

on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The greatest potential impact to fish during construction would occur during impact pile driving, rock hammering, and DTH excavation (DTH mono-hammer and cluster drill). However, the duration of impact pile driving would be limited to the final stage of installation (''proofing'') after the pile has been driven as close as practicable to the design depth with a vibratory driver. Vibratory pile driving and rock hammering would possibly elicit behavioral reactions from fish such as temporary avoidance of the area but is unlikely to cause injuries to fish or have persistent effects on local fish populations. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal shipyard operations and other vessel traffic. In general, impacts on marine mammal prey species are expected to be minor and temporary.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals outside this project area. Construction may have temporary impacts on benthic invertebrate species, another marine mammal prey source. Direct benthic habitat loss would result with the permanent loss of approximately 3.5 acres (14,164 square m) of benthic habitat from construction of the super flood basin. The water surface of Great Bay Estuary extends approximately 4.45 square miles (124,000,000 sf) at low tide (Mills No date). Therefore, the loss of 152,000 sf would represent approximately one-tenth of one percent of the benthic habitat in the estuary at low tide. However, the areas to be permanently removed are beneath and adjacent to the existing berths along the Shipyard's industrial waterfront and are regularly disturbed as part of the construction dredging to maintain safe navigational depths at the berths. Further, vessel activity at the berths creates minor disturbances of benthic habitats (*e.g.,* vessel propeller wakes) during waterfront operations. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area. The impacts will be temporary and highly localized, and no habitat will be permanently impacted by construction. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the project would be minimal.

The area impacted by the project is relatively small compared to the available habitat just outside the project area, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the Navy's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of small numbers and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, in the form of behavioral disturbance, masking, and potential TTS, with a smaller amount of Level A harassment in the form of PTS. As described previously, no mortality is anticipated or proposed to be authorized

for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (RMS) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (RMS) for impulsive and/or intermittent (*e.g.,* impact pile driving, DTH) sources. The Navy's construction includes the use of continuous and impulsive sources, and therefore the level of 120 and 160 dB re 1 μPa (RMS) is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity. The technical guidance does this by identifying threshholds in the follow manner:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* sound pressure level (peak SPL) and sound exposure level (SEL) (also accounting for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting the fact that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science and are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection.*

As mentioned previously, the Navy's modification and expansion of Dry Dock 1 includes the use of impulsive (*i.e.,* impact pile driving, DTH) and non-impulsive (*i.e.,* drilling, vibratory pile driving) sources.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT FOR HIGH FREQUENCY CETEACEANS AND PINNIPEDS

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (HF cetaceans and PW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels transmission loss coefficient.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$,

where

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading was used to determine sound propagation for this project.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are sound source level (SSL) measurements available for certain pile types and sizes from the similar environments from other Navy pile driving projects that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely to result from the pile driving and removal activities (Table 6). Some of the proxy source levels are expected to be more conservative, as the values are from larger pile sizes. Acoustic monitoring results and associated monitoring reports from past projects conducted at the shipyard and elsewhere were reviewed. Projects reviewed were those most similar to the specified activity in terms of drilling and rock hammering activities, type and size of piles installed, method of pile installation, and substrate conditions.

TABLE 6—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS (AT 10 M FROM SOURCE)

Pile type	Installation method	Pile diameter	Peak (dB re 1 μPa)	RMS (dB re 1 μPa)	SEL (dB re 1 μPa² sec)
Casing/Socket	Rotary Drill	102-inch [1]	NA	154 m	NA
Shaft	DTH Cluster Drill	78-inch [2]	NA	195.2 (Level A) 167 dB (Level B)	181
Casing	DTH mono-hammer	42-inch [1]	194	167	164
Rock anchor	DTH mono-hammer	9-inch [1]	172	167	146
Relief hole	DTH mono-hammer	4 to 6-inch [1]	170	167	144
Z-shaped Sheet	Impact	28-inch [3]	211	196	181
	Vibratory	28-inch [4]	NA	167	167
Flat sheet	Vibratory	18-inch [5]	NA	163	163
Bedrock and concrete demolition.	Rock Hammer [6] thnsp;[7]	NA	197	184	175

[1] Egger 2021a.
[2] Egger 2021b.
[3] A proxy value for impact pile driving 28-inch steel sheet piles could not be found so the proxy for a 30-inch steel pipe pile has been used (NAVFAC SW 2020 [p. A–4]).
[4] A proxy value for vibratory pile driving 28-inch steel sheet piles could not be found so a proxy for a 30-inch steel pipe pile has been used (Navy 2015 [p. 14]).
[5] NMFS 2019 (p. 24484, Table 5).
[6] Reyff 2018a.
[7] Reyff 2018b.
Notes: All SPLs are unattenuated; dB = decibels; NA = Not applicable; single strike SEL are the proxy sources levels presented for impact pile driving and were used to calculate distances to PTS.
dB re 1 μPa = dB referenced to a pressure of 1 microPascal, measures underwater SPL. dB re 1 μPa²-sec = dB referenced to a pressure of 1 microPascal squared per second, measures underwater SEL.
All recordings were made at 10 meters unless noted otherwise.

With regards to the proxy values summarized in Table 6, very little information is available regarding source levels for in-water rotary drilling activities. As a conservative measure and to be consistent with previously issued IHAs for similar projects in the region (Egger 2021a; Dazey 2012), a proxy of 154 dB RMS is proposed for all rotary drilling activities.

Rock hammering is analyzed as an impulsive noise source. For purposes of this analysis, it is assumed that the hammer would have a maximum strike rate of 460 strikes per minute and would operate for a maximum duration of 15 minutes before needing to reposition or stop to check progress. Therefore, noise impacts for rock hammering activities are assessed using the number of blows per 15-minute interval (6,900 blows) and the number of 15-minute intervals anticipated over the course of the day based on the durations provided in Table 2–1 and Table 6–5. As with rotary drilling, very little information is available regarding source levels associated with nearshore rock hammering. Measurements taken for this activity as part of the Tappan Zee Bridge replacement project recorded sound levels as follows:

- 197 dBpk, 184 dB RMS, 175 dB SEL (Reyff 2108a, 2018b)

Since no other comparable proxy values were identified in the literature, the Navy is proposing to use the same proxy values for rock hammering activities associated with P–381.

The Navy consulted with NMFS to obtain the appropriate proxy values for DTH mono-hammers. With regards to DTH mono-hammers, NMFS provided proxy values of 170 dBpk, 167 RMS, and 144 dB single strike SEL for holes 8-inches in diameter or less (Reyff 2020); 172 dBpk, 167 RMS, and 146 dB single strike SEL for holes 8- to 18

inches in diameter (Guan and Miner 2020); and 194 dBpk, 167 RMS, and 164 dB single strike SEL for holes 24- to 42-inches in diameter (Reyff 2020, Denes et al 2019 as cited in NMFS 2021a). For the 78-inch DTH cluster drill, NMFS provided an RMS value of 195.2 based off of regression and extrapolation calculations of existing data. Because of the high number of hammers and strikes for this system, cluster drills were treated as a continuous sound source for the time component of Level A harassment but still used the impulsive thresholds. The Level B harassment sound source level at 10 m remained at 167 dB RMS (Heyvaert and Reyff, 2021 as cited in NMFS 2021b).

In conjunction with the NMFS Technical Guidance (2018), in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, NMFS developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that, because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimation of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For stationary sources (such as from impact and vibratory pile driving), the NMFS User Spreadsheet (2020) predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet can be found in Appendix A of the Navy's application and the resulting isopleths are reported below (Tables 7 and 8).

Calculated distances to Level A harassment (PTS Onset) and Level B harassment thresholds are large, especially for DTH and rock hammering activities. However, the full distance of sound propagation would not be reached due to the presence of land masses and anthropogenic structures that would prevent the noise from reaching nearly the full extent of the larger harassment isopleths. Refer to Figure 2 for the region of influence, which illustrates that the land masses preclude the sound from traveling more than approximately 870 m (3,000 ft) from the source, at most.

Maximum distances are provided for the behavioral thresholds for in-water construction activities. Areas encompassed within the threshold (harassment zones) were calculated by using a Geographical Information System to clip the maximum calculated distances to the extent of the region of influence (ROI) (refer to Figure 2 for the ROI).

Table 7 summarizes the calculated maximum distances corresponding to the underwater marine mammal harassment zones from impulsive (impact pile driving, rock hammering, DTH) and Table 8 for non-impulsive noise (vibratory pile driving, rotary drilling, etc.) and the area of the harassment zone within the ROI. The distances do not take the land masses into consideration, but the ensonified areas do. Neither consider the reduction that will be achieved by the required use of a bubble curtain and therefore all take estimates are considered conservative. Refer to Figures 6–9 through 6–11 of the application for the calculated maximum distances corresponding to the underwater marine mammal harassment zones from impulsive (impact pile driving, rock hammering, DTH) and non-impulsive noise (vibratory pile driving, rotary drilling) and the corresponding area of the harassment zone within the ROI.

TABLE 7—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR IMPULSIVE NOISE

[DTH, impact pile driving, hydraulic rock hammering]

Activity	Purpose	Count and size/duration	Total production days	Level A harassment (PTS onset) *		Level B harassment *
				High frequency cetaceans (harbor porpoise)	Phocid pinnipeds	Harbor porpoise and phocids
DTH Cluster Drill	Foundation Support Piles for Center Wall.	38, 78-inch shafts	247	84,380.4 m/0.417 km².	37,909.7 m/0.417 km².	13,594 m/0.417 km².
DTH Cluster Drill	Foundation Leveling Piles for Center Wall.	18, 78-inch shafts	117	84,380.4 m/0.417 km².	37,909.7 m/0.417 km².	13,594 m/0.417 km².
DTH Cluster Drill	Center Wall—Access Support Platform.	38, 78-inch shafts	133	84,380.4 m/0.417 km².	37,909.7 m/0.417 km².	13,594 m/0.417 km².
DTH Mono-hammer	Center Wall—Temporary Launching Piles.	6, 42-inch shafts	6	3,880.3 m/0.417 km²	1,743.3 m/0417km²	13,594 m/0.417 km².
DTH Mono-hammer	Center Wall Tie-Downs	36, 9-inch holes	18	244.8 m/0.074 km²	110 m/0.0229 km²	13,594 m/0.417 km².
DTH Mono-hammer	Center Wall—Access Platform Tie-Downs.	18, 9-inch holes	9	244.8 m/0.0741 km²	110 m/0.0229 km²	13,594 m/0.417 km².
Impact Pile Driving	West Closure Wall Tie-In to Existing Wall.	16, ** 28-inch Z-shaped sheets.	** 4	988.2 m/0.4034 km²	444.0 m/0.2012 km²	2,512 m/0.417 km².
Impact Pile Driving	Berth 11 End Wall Secant Pile Guide Wall.	60, 28-inch Z-shaped sheets.	7	1,568.6 m/0.417 km²	704.7 m/0.365 km²	2,512 m/0.417 km².
DTH Mono-hammer	Relief Holes Under West Closure Cell.	500, 4–6 inch holes	20	180.1 m/0.0481 km²	80.9 m/0.015 km²	13,594 m/0. 417 km².
DTH Mono-hammer	Mechanical Rock Removal Along Face of Existing Abutment.	46, 42-inch casing advancements.	24	3,880.3 m/0.417 km²	1,743.3 m/0.417 km²	13,594 m/0.417 km².
DTH Mono-hammer	Install Piles for Dry Dock 1 North Entrance Abutment.	28, 42-inch shafts	28	3,880.3 m/0.417 km²	1,743.3 m/0.417 km²	13,594 m/0.417 km².
DTH Mono-hammer	Relief Holes Under West Closure Cell.	2,201, ** 4–6 inch holes.	** 82	180.1 m/0.0481km²	80.9 m/0.015 km²	13,594 m/0.417 km².
DTH Mono-hammer	Mechanical Rock Removal Along Face of Existing Abutment.	365, 42-inch casing advancements.	183	3,880.3 m/0.417 km²	1,743.3 m/0.417 km²	13,594 m/0.417 km².
DTH Mono-hammer	Dry Dock 1 Entrance Tremie Tie Downs.	100, 9-inch holes	52	132.9 m/0.0303 km²	59.7 m/0.009km²	13,594 m/0.417 km².

TABLE 7—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR IMPULSIVE NOISE—Continued

[DTH, impact pile driving, hydraulic rock hammering]

Activity	Purpose	Count and size/duration	Total production days	Level A harassment (PTS onset)*		Level B harassment*
				High frequency cetaceans (harbor porpoise)	Phocid pinnipeds	Harbor porpoise and phocids
Impact Pile Driving	Install Sheet Piles for Dry Dock 1 North Entrance and Temporary Cofferdam.	96, 28-inch Z-shaped sheets.	12	1,568.6 m/0.417 km²	704.7 m/0.365km²	2,512 m/0.417 km².
Hydraulic Rock Hammer.	Removal of Sheetpile and Granite Quay Wall (610 cy).	2.5 hours	** 10	5,860.0 m/0.417 km²	2,633 m/0.4174km²	398 m/0.165 km².
Hydraulic Rock Hammer.	Mechanical Rock Removal (985 cy) Under West Closure Cell.	9 hours	77	13,766 m/0.417 km²	6,184.7 m/0.417 km²	398 m/0.165 km².
Hydraulic Rock Hammer.	Shutter Panel Demolition	5 hours	** 56	9,303.1 m/0.417 km²	4,179.6 m/0.417 km²	398 m/0.165 km².
Hydraulic Rock Hammer.	Mechanical Rock Removal (3,500 cy) Along Face of Existing Berth 11 at Basin Floor.	12 hours	** 100	16,676.3 m/0.417 km².	7,492.2 m/0.417 km²	398 m/0.165 km².
Hydraulic Rock Hammer.	P–310 Sheet Pile Removal—Berth 1.	12, 25-inch Z-shaped sheets, 6 hours.	** 3	10,505.4 m/0.417 km².	4,719.8 m/0.417 km²	398 m/0.1652 km².
Hydraulic Rock Hammer.	Berth 1 Top of Wall Demolition for Waler Install.	10 hours	** 6	14,767.7 m/0.417 km².	6,634.7 m/0.417 km²	398 m/0.165km².

Source: Kiewit 2021.

Notes:

* To determine underwater harassment zones, ensonified areas from the source were clipped along the shoreline using Geographical Information Systems (GIS).

** These activities will continue into the following construction years and the remaining construction days and activities will be included in a subsequent LOA. The construction days and activities represented in this table account ONLY for year 1 activities.

If = linear feet; N/A = Not Applicable.

Proxy sources used were unattenuated SPLs.

TABLE 8—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR NON-IMPULSIVE NOISE

[Vibratory pile driving, rotary drilling]

Activity	Purpose	Count and size	Total production days	Level A harassment (PTS onset)		Level B harassment
				High frequency cetaceans harbor porpoise	Phocid pinnipeds	Harbor porpoise and phocids
Rotary Drill	Center Wall Foundation Pile—Install Outer Casing.	38, 102-inch Borings	38	2.1 m/0.000014 km²	1.3 m/0.000005 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Foundation Pile—Pre-Drill Socket.	38, 102-inch Borings	38	8.9 m/0.000248 km²	5.4 m/0.000091 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Foundation Pile—Remove Outer Casing.	38, 102-inch Borings	38	0.8 m/0.000002 km²	0.5 m/0.000001 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Leveling Piles—Install Outer Casing.	18, 102-inch Borings	18	2.1 m/0.000014 km²	1.3 m/0.000005 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Leveling Piles—Pre-Drill Socket.	18, 102-inch Borings	18	8.9 m/0.000248 km²	5.4 m/0.000091 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Leveling Piles—Remove Outer Casing.	18, 102-inch Borings	18	0.8 m/0.000002 km²	0.5 m/0.000001 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Access Platform Support—Install Outer Casing.	38, 102-inch Borings	38	2.1 m/0.000014 km²	1.3 m/0.000005 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Access Platform Support—Pre-Drill Socket.	38, 102-inch Borings	38	8.9 m/0.000248 km²	5.4 m/0.000091 km²	1,848 m/0.417 km².
Rotary Drill	Center Wall Access Platform Support —Remove Outer Casing.	38, 102-inch Borings	38	0.8 m/0.000002 km²	0.5 m/0.000001 km²	1,848 m/0.417 km².
Vibratory Pile Driving	Tie-In to Existing West Closure Wall.	16, ** 28-inch Z-Shaped Sheets.	** 4	12.2 m/0.000454 km².	5.0 m/0.000078 km²	13,594 m/0.417 km².
Vibratory Pile Driving	Berth 11 End Wall Secant Pile Guide Wall.	60, 28-inch Z-Shaped Sheets.	7	19.4 m/0.001041 km².	8.0 m/0.0002 km²	13,594 m/0.417 km².
Vibratory Extraction	Remove P–310 West Closure Wall.	238, 18-inch Flat Sheets.	60	6.6 m/0.000136 km²	2.7 m/0.000023 km²	7,356 m/0.417 km².
Vibratory Pile Driving	Install Sheet Piles for Dry Dock 1 North Entrance and Temporary Cofferdam.	96, 28-inch Z-Shaped Sheets.	12	19.4 m/0.001041 km².	8.0 m/0.0002 km²	13,594 m/0.417 km².

** These activities will continue into the following construction years and the remaining construction days and activities will be included in a subsequent LOA. The construction days and activities represented in this table account ONLY for year 1 activities.

If = linear feet; N/A = Not Applicable.

Proxy sources used were unattenuated SPLs.

Concurrent Activities

Simultaneous use of pile drivers, hammers, and drills could result in increased SPLs and harassment zone sizes given the proximity of the component sites and the rules of decibel addition (see Table 9 below). Due to the relatively small size of the ROI, the use of a single DTH cluster drill or rock hammer would ensonify the entire ROI to the Level A harassment thresholds (PTS Onset) (refer to Table 7). Therefore, when this equipment is operated in conjunction with other noise generating equipment, there would be no change in the size of the harassment zone. The entire ROI would remain ensonified to the Level A harassment thresholds for the duration of the activity and there would be no Level B harassment zone. However, when DTH cluster drills or rock hammers are not in use, increased SPLs and harassment zone sizes within the ROI could result. Due to the large amount of bedrock excavation required for the construction of the multifunctional expansion of Dry Dock 1, the only scenario identified in which DTH cluster drills and/or rock hammers would not be in operation would be at the beginning of the project when two rotary drills could be used simultaneously (refer to Table 2).

According to recent, project specific, guidance provided by NMFS to the Navy, when two noise sources have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources because the isopleth of one sound source encompasses the sound source of another isopleth. In such instances, the sources are considered additive and combined using the rules of decibel addition, presented in Table 9 below.

TABLE 9—ADJUSTMENTS FOR SOUND EXPOSURE LEVEL CRITERION

Source types	Difference in sound level (at specified meters)	Adjustments to specifications for Level A harassment RMS/ SEL_{ss}* calculations
Non-impulsive, continuous/Non-impulsive, continuous OR Impulsive source (multiple strikes per second)/Impulsive source (multiple strikes per second.	0 or 1 dB	Add 3 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).
	2 or 3 dB	Add 2 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).
	4 to 9 dB	Add 1 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).
	10 dB or more	Add 0 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).

* RMS level for vibratory pile driving/rotary hammer and single strike SEL (SEL_{ss}) level for DTH/rock hammer.

For simultaneous usage of three or more continuous sound sources, the three overlapping sources with the highest sound source levels are identified. Of the three highest sound source levels, the lower two are combined using the above rules, then the combination of the lower two is combined with the highest of the three. For example, with overlapping isopleths from 24-, 36-, and 42-inch diameter steel pipe piles with sound source levels of 161, 167, and 168 dB RMS respectively, the 24- and 36-inch would be added together; given that 167 − 161 = 6 dB, then 1 dB is added to the highest of the two sound source levels (167 dB), for a combined noise level of 168 dB. Next, the newly calculated 168 dB is added to the 42-inch steel pile with sound source levels of 168 dB. Since 168 − 168 = 0 dB, 3 dB is added to the highest value, or 171 dB in total for the combination of 24-, 36-, and 42-inch steel pipe piles (NMFS, 2021 unpublished). By using this method, a revised proxy source for Level A and Level B analysis was determined for the use of two, 102-inch diameter rotary drills. The revised proxy value is presented in Table 10 and the resulting harassment zones are summarized in Table 11 (depicted in Figure 6–13 in the Navy's application).

TABLE 10—REVISED PROXY VALUES FOR SIMULTANEOUS USE OF NON-IMPULSIVE SOURCES

Equipment		Rotary drill
	RMS	154
Rotary Drill	154	157

TABLE 11—LEVEL A AND LEVEL B HARASSMENT ZONES RESULTING FROM THE SIMULTANEOUS USE OF TWO, 102-in DIAMETER ROTARY DRILL

Multiple source scenario	Level A harassment (PTS Onset)		Level B harassment
	Harbor porpoise distance to 155 dB SEL_{cum} threshold/area of harassment zone	Phocids distance to 185 dB SEL_{cum} threshold/area of harassment zone	Harbor porpoise and phocids distance to 120 dB (DTH) threshold/area of harassment zone
2 Rotary Drills	23.6 m/0.002 km^2	9.7 m/0.0002 km^2	2,929 m/0.417 km^2.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile and vibratory pile driving, rotary drilling, DTH, and rock hammering noise for each acoustic threshold were estimated using marine mammal density estimates (N) from the Navy Marine Species Density Database (NMSDD) (Navy 2017) or from monitoring reports from the Berth 11 Waterfront Improvements and P–310 construction projects. Specifically, where monitoring data specific to the project area were available, they were used, and the NMSDD data were used when there were no monitoring data available. The take estimate was determined using the following equation take estimate = N * days of activity * area of harassment. The pile type, size, and installation method that produce the largest zone of influence (ZOI) were used to estimate exposure of marine mammals to noise impacts. We describe how the information provided above is brought together to produce a quantitative take estimate in the species sections below.

Harbor Porpoise

Harbor porpoises may be present in the proposed project area during spring, summer, and fall, from April to December. Based on density data from the Navy Marine Species Density Database, their presence is highest in spring, decreases in summer, and slightly increases in fall. During previous monitoring of construction projects in the area, three harbor porpoise were sighted between April and December of 2017; two harbor porpoise were sighted in early August of 2018; and one harbor porpoise was sighted in 2020 (Cianbro 2018a, b; Navy 2019; NAVFAC 2021). Using the 2017 and 2018 data from construction monitoring for the Berth 11 Waterfront Improvements project, the density of harbor porpoise for the largest harassment zone was determined to be 0.04/km^2.

Estimated take was calculated by density * harassment zone * days for each activity (see Table 12). Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensonified area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment.

TABLE 12—CALCULATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR PORPOISE BY PROJECT ACTIVITY

Project activity	Density	Level A harassment zone (km^2)	Number of days	Take by Level A harassment	Level B harassment zone (km^2)	Take by Level B harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	0.04	0.417	247	4	0.417	0
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	0.04	0.417	117	2	0.417	0
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	0.04	0.417	133	2	0.417	0
Mechanical Rock Excavation, Hydraulic rock hammering (985 cy)	0.04	0.417	77	1	0.165	0
Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	0.04	0.417	56	1	0.165	0
Mechanical Rock Removal at Basin Floor: Excavate Bedrock, Hydraulic rock hammering	0.04	0.417	100	2	0.165	0
Mechanical Rock at Abutment: Drill 365 rock borings (1,220 cy), 42-inch diameter casing, Mono-hammer DTH	0.04	0.417	183	3	0.417	0
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Install) 102-inch diameter outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Pre-drill) 102-inch diameter socket,	0.04	0.00001	38	0	0.417	1
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Remove) 102-inch outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Install) 102-inch diameter outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Pre-drill) 102-inch diameter socket	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Remove) 102-inch outer casing,	0.04	0.0000002	38	0	0.417	1
Remove Wall: 238 sheet piles, 18-inch wide flatwebbed, Vibratory Extraction	0.04	0.000136	60	0	0.417	1
Mechanical Rock Removal at Basin Floor: Drill 2,201 relief holes, 4–6 holes, Mono-hammer DTH,	0.04	0.048109	82	0	0.417	1
Drill Tremie Ties Downs: Drill 100 rock anchors, 9-inch holes, Mono-hammer DTH	0.04	0.0303	52	0	0.417	1
Total Estimated Take				15		9

In summary, we estimate that up to 15 takes in the form of Level A harassment and/or Level B harassment could occur during DTH excavation (DTH mono-hammer and cluster drill), impact pile driving, and rock hammering activities. In addition, DTH mono-hammer excavation could result in 2 takes by Level B harassment and vibratory installing/extracting and rotary drilling activities could result in 7 takes by Level B harassment (Table 12).

Harbor Seal

Harbor seals may be present year-round in the project vicinity, with constant densities throughout the year. Harbor seals are the most common pinniped in the Piscataqua River near the Shipyard. Harbor seal sightings were recorded during monthly surveys conducted in 2017 and 2018 (NAVFAC Mid-Atlantic 2018, 2019b) as well as during Berth 11 and P–310 construction monitoring in 2017, 2018, 2020 and 2021 (Cianbro 2018a, b; Navy 2019; Stantec 2020, Stantec 2021). Estimated take by Level B harassment has been calculated by multiplying the average number of harbor seals sighted per day from May 2020 through October 2021 by the number of actual in-water

construction days (375 days (159 during P–310 year 1 and 216 during P–310 year 2). Over the course of this time period, there have been 1,023 harbor seal observations equating to equating to 3 harbor seal sightings per day. Initially, takes were calculated for Level A and Level B harassment for harbor seals where the density of animals (2.48 harbor seals/km^2, rounded to 3) was multiplied by the harassment zone and the number of days per construction activity. However, using that method produced take numbers for Level B harassment that were lower than the number of harbor seals that has been previously observed in the Navy's monitoring reports. Therefore, NMFS is proposing (and the Navy agrees), to increase the take by Level B harassment to more accurately reflect harbor seal observations in the monitoring reports, by using the value of three harbor seals a day multiplied by the total number of construction days resulting in 1,125 takes by Level B harassment proposed for authorization. Take by Level A harassment of 1,269 harbor seals is shown in Table 13 below. Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensonified area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment. The proposed takes by Level B harassment were not included in Table 13 as they were calculated by a different method.

TABLE 13—CALCULATED PROPOSED TAKE BY LEVEL A HARASSMENT OF HARBOR SEAL BY PROJECT ACTIVITY

Project activity	Harbor seals density	Level A harassment zone (km^2)	Number of days	Take by Level A harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	3	0.417	247	309
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	3	0.417	117	146
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	3	0.417	133	166
Center Wall—Temp Launching Piles: 6 drilled shafts: 42-inch diameter shaft, Mono-hammer DTH	3	0.417	6	8
Center Wall Tie Downs: 36 Rock Anchors (Install): 9-inch diameter holes, Mono-hammer DTH	3	0.023	18	1
Center Wall—Access Platform Tie Downs: 18 Rock Anchors (Install): 9-inch diameter holes, Mono-hammer DTH	3	0.023	9	1
Center Wall-Install Tie-In to Existing West Closure Wall: 16 sheet piles: 28-inch wide Z-shaped sheets—IMPACT Install	3	0.201	4	2
Berth 11 End Wall—Install Secant Pile Guide Wall: 60 sheets piles: 28-inch wide Z-shaped sheets—IMPACT Install	3	0.417	7	8
Berth 1—Remove Granite Block Quay Wall: 610 cy, Granite block demo, Hydraulic Rock hammering	3	0.417	10	13
P310 West Closure Wall—Mechanical Rock Excavation: 985 cy, Excavated bedrock, Hydraulic rock hammering	3	0.417	77	96
P310 West Closure Wall—Mechanical Rock Excavation: Drill 500 relief holes, 4–6 inch holes, Mono-hammer DTH	3	0.015	20	1
P310 West Closure Wall—Mechanical Rock Excavation: Drill 46 rock borings (50 cy), 42-inch diameter casing, Mono-hammer DTH	3	0.417	24	30
West Closure well—Berth 11 Abutment- Install Piles: Drill 28 shafts, 42-inch diameter casing, Mono-hammer DTH	3	0.417	28	35
Berth 11—Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	3	0.417	56	70
Berth 11 Face—Mechanical Rock Removal at Basin Floor: 3,500 cy, Excavate Bedrock, Hydraulic rock hammering	3	0.417	100	125
Berth 11 Face—Mechanical Rock Removal at Basin Floor: Drill 2,201 relief holes, 4–6 holes, Mono-hammer DTH	3	0.015	82	4
Berth 11 Face—Mechanical Rock at Abutment: Drill 365 rock borings (1,220 cy), 42-inch diameter casing, Mono-hammer DTH	3	0.417	183	229
Dry Dock 1 North Entrances—Install Temporary Cofferdam: Install 96 sheet piles, 28-inch wide Z-shaped sheets, IMPACT Install	3	0.365	12	13
Berth 1—Remove sheet piles: Remove 12 sheet piles, 25-inch wide Z-shaped sheets, Hydraulic rock hammering	3	0.417	3	4
Berth 1 Top of Wall—Demolition for Waler Installation: 30 lf, Mechanical concrete demolition, Hydraulic rock hammering	3	0.417	6	8
Total Estimated Take				1,269

Gray Seal

Gray seals may be present year-round in the project vicinity, with constant densities throughout the year. Gray seals are less common in the Piscataqua River than the harbor seal. Sightings of gray seals were recorded during P–310 construction monitoring in 2020 and 2021 (Stantec 2020; Stantec 2021). Estimated take by Level B harassment has been calculated by multiplying the average number of gray seal observations per day from May 2020 through October 2021 (47 during year 1 P–310 monitoring and 9 during year 2 P–310 monitoring (to date)) over the course of 337 monitoring days (Stantec 2020; 2021). Over the course of this time period, there have been 56 gray seal observations equating to equating to 0.2 gray seal sightings per day. Initially, takes were calculated for Level A and Level B harassment for gray seals where

the density was multiplied by the harassment zone and the number of days per construction activity. However, using that method produced take numbers for Level B harassment that were fewer than the number of gray seals that has been previously observed in the Navy's monitoring reports. Therefore, NMFS is proposing (and the Navy agrees), to increase the take by Level B harassment to more accurately reflect gray seal observations in the monitoring reports, by using the value of 0.2 gray seals multiplied by the total number of construction days resulting in 75 takes by Level B harassment proposed for authorization. Initially takes were calculated for Level A and Level B harassment for gray seals in a similar manner where takes were determined by individual activity. However, NMFS is proposing (and Navy agrees) to increase the take by Level B harassment by using the value of 0.2 gray seals which were then multiplied by the number of total construction days resulting in 75 takes by Level B harassment proposed for authorization. Take by Level A harassment of 85 gray seals is shown in Table 14 below. Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensonified area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment. The proposed takes by Level B harassment were not included in Table 14 as they were calculated by a different method.

TABLE 14—CALCULATED PROPOSED TAKE BY LEVEL A HARASSMENT OF GRAY SEAL BY PROJECT ACTIVITY

Project activity	Gray seal density	Level A harassment zone (km^2)	Number of days	Take by Level A harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	0.2	0.417	247	21
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	0.2	0.417	117	10
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	0.2	0.417	133	11
Center Wall—Temp Launching Piles: 6 drilled shafts: 42-inch diameter shaft, Mono-hammer DTH	0.2	0.417	6	1
Berth 11 End Wall—Install Secant Pile Guide Wall: 60 sheets piles: 28-inch wide Z-shaped sheets—IMPACT Install	0.2	0.417	7	1
Berth 1—Remove Granite Block Quay Wall: 610 cy, Granite block demo, Hydraulic Rock hammering	0.2	0.417	10	1
P310 West Closure Wall—Mechanical Rock Excavation: 985 cy, Excavated bedrock, Hydraulic rock hammering	0.2	0.417	77	6
P310 West Closure Wall—Mechanical Rock Excavation: Drill 19 rock borings (50 cy), 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	24	2
West Closure well—Berth 11 Abutment- Install Piles: Drill 28 shafts, 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	28	2
Berth 11—Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	0.2	0.417	56	5
Berth 11 Face—Mechanical Rock Removal at Basin Floor: 1,020 cy, Excavate Bedrock, Hydraulic rock hammering	0.2	0.417	3	8
Berth 11 Face—Mechanical Rock at Abutment: Drill 192 rock borings (610 cy), 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	24	15
Dry Dock 1 North Entrances—Install Temporary Cofferdam: Install 96 sheet piles, 28-inch wide Z-shaped sheets, IMPACT Install	0.2	0.365	12	1
Berth 1 Top of Wall—Demolition for Waler Installation: 30 lf, Mechanical concrete demolition, Hydraulic rock hammering	0.2	0.417	6	1
Total Estimated Take				85

Hooded Seal

Hooded seals may be present in the project vicinity from January through May, though their exact seasonal densities are unknown. In general, hooded seals are much rarer than the harbor seal and gray seal in the Piscataqua River. One take per month from January to May from Level B harassment of a hooded seal for the Berth 11 Waterfront Improvements Construction project (NMFS 2018b) and for Year 1 construction activities for Dry Dock 1 (NMFS, 2019) was previously authorized. To date, the monitoring for that project and for the density surveys have not recorded a sighting of hooded seal in the project area (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019; Stantec 2020; Stantec 2021). In order to guard against unauthorized take, the Navy is requesting and NMFS is proposing one take by Level B harassment of hooded seal per month (between the months of January and May) resulting in five total takes of Level B harassment. No take by Level A harassment is anticipated or proposed for authorization.

Harp Seal

Harp seals may be present in the project vicinity January through May. In general, harp seals are much rarer than the harbor seal and gray seal in the Piscataqua River. As discussed above for hooded seals, one take by Level B harassment during each month of construction for the Berth 11 Waterfront Improvements Project (NMFS 2018b) and for year 1 construction activities for Dry Dock 1 (NMFS, 2019) was previously authorized. The monitoring for the Berth 11 Waterfront Improvements Construction and P–310 projects did not record any sightings of harp seal in the project area (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019; Stantec 2020; Stantec 2021). However, it should be noted that two harp seals (one on 5/12/2020 and one on 5/14/2020) were observed when pile driving activities were not

occurring (Stantec 2020). In order to guard against unauthorized take, the Navy is requesting and NMFS is proposing one take by Level B harassment of harp seal per month (between the months of January and May) resulting in five total takes of Level B harassment. No take by Level A harassment is anticipated or proposed for authorization.

Table 15 below summarizes the authorized take for all the species described above as a percentage of stock abundance.

TABLE 15—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N_{EST})	Proposed Level A harassment	Proposed Level B harassment	Percent of stock
Harbor porpoise	Gulf of Maine/Bay of Fundy (95,543)	15	9	Less than 1 percent.
Harbor seal	Western North Atlantic (61,336)	1,269	1,125	Less than 3 percent.
Gray seal	Western North Atlantic (451,600)	85	75	Less than 1 percent.
Hooded seal	Western North Atlantic (593,500)	0	5	Less than 1 percent.
Harp seal	Western North Atlantic (7.6 million)	0	5	Less than 1 percent.

Proposed Mitigation

Under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

General

The Navy shall follow mitigation procedures as described below. In general, if poor environmental conditions restrict full visibility of the shutdown zone, pile driving activities would be delayed.

Training

The Navy shall ensure that construction supervisors and crews, the monitoring team, and relevant Navy staff are trained and prior to the start of construction activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project shall be trained prior to commencing work.

Avoiding Direct Physical Interaction

The Navy shall avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations shall cease and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Shutdown Zones

The Navy will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Table 16).

TABLE 16—PILE DRIVING SHUTDOWN ZONE AND MONITORING ZONES DURING PROJECT ACTIVITIES

P–381 Year 1 activity description	Shutdown zone (m)		Level B harassment [1] monitoring zone (m)
	Harbor porpoise	Phocids	
78-inch cluster drill	[2] 200	[2] 50	ROI.
DTH monohammer—42-inch	[2] 200	[2] 50	ROI.
DTH monohammer—9-inch Center wall tie downs	[2] 200	[2] 50	ROI.
DTH monohammer—9-inch tremie tie-downs	[2] 200	[2] 50	ROI.
DTH monohammer—4–6-inch (500)	[2] 200	[2] 50	ROI.
Impact install of sheet piles (16) West Closure Wall Tie-in	[2] 200	[2] 50	ROI.
Impact install of sheet piles (60) Secant pile guide wall; (96) temporary coffer dam	[2] 200	[2] 50	ROI.

TABLE 16—PILE DRIVING SHUTDOWN ZONE AND MONITORING ZONES DURING PROJECT ACTIVITIES—Continued

P–381 Year 1 activity description	Shutdown zone (m)		Level B harassment [1] monitoring zone (m)
	Harbor porpoise	Phocids	
Rock hammering—all durations	[2] 200	[2] 50	ROI.
Rotary drilling—Install 102-inch casing	10	10	ROI.
Rotary drilling—Predrill 102-inch socket	10	10	ROI.
Rotary drilling—Remove 102-inch casing	10	10	ROI.
Vibratory pile driving (16) 28-inch sheets	20	10	ROI.
Vibratory pile driving (60) and (96) 28-inch sheets	20	10	ROI.
Vibratory extraction (238) 28-inch sheets	10	10	ROI.

Notes:
[1] In instances where the harassment zone is larger than the ROI, the entire ROI is indicated as the limit of monitoring.
[2] Reduced Monitoring area distance negotiated with NMFS.
Key: ROI—region of influence.

Soft Start

The Navy shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Bubble Curtain

A bubble curtain shall be installed across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI. The Navy will record hydroacoustic measurements inside and outside of the bubble curtain. Should the results of the recordings inside the bubble curtain show that thresholds are not being exceeded by the activity occurring, that upon review of the data by NMFS, Navy may discontinue use of the bubble curtain for those activities that are not actually exceeding thresholds.

Based on our evaluation of the applicant's planned measures, NMFS has preliminarily determined that the mitigation measures provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as for ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The Navy shall submit a Marine Mammal Monitoring Plan to NMFS for approval in advance of the start of construction.

Monitoring Zones

The Navy shall conduct monitoring to include the area within the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB RMS threshold for impact driving and the 120 dB RMS threshold during vibratory pile driving) (see Table 16 above). These monitoring zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Visual Monitoring

Monitoring shall take place from 30 minutes (min) prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 min post-completion of pile driving activity. If a marine mammal is observed entering or within the shutdown zones, pile driving shall be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 min have passed without re-detection of the animal. Pile driving activity shall be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been

met, entering or within the disturbance zone.

Protected Species Observer (PSO) Monitoring Requirements and Locations

PSOs shall be responsible for monitoring, the shutdown zones, the disturbance zones and the pre-clearance zones, as well as effectively documenting Level A and B harassment take. As described in more detail in the Reporting section below, they shall also (1) document the frequency at which marine mammals are present in the project area, (2) document behavior and group composition, (3) record all construction activities, and (4) document observed reactions (changes in behavior or movement) of marine mammals during each sighting. The PSOs shall monitor for marine mammals during all in-water pile activities associated with the project. The Navy shall monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. Visual monitoring shall be conducted by three PSOs. It is assumed that three PSOs shall be located on boats, docks, or piers sufficient to monitor the respective ROIs given the abundance of suitable vantage points (see Figure 11–1 of the application). The PSOs must record all observations of marine mammals, regardless of distance from the pile being driven.

In addition, PSOs shall work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts and will not perform duties as a PSO for more than 12 hrs in a 24-hr period (to reduce PSO fatigue).

Monitoring of pile driving shall be conducted by qualified, PSOs. The Navy shall adhere to the following conditions when selecting PSOs:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training;
- Where a team of three PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to this rule.

The Navy will ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Hydroacoustic Monitoring

The Navy shall conduct a sound source verification (SSV) study for all pile types and will follow accepted methodological standards to achieve their objectives. The Navy shall submit an acoustic monitoring plan to NMFS for approval prior to the start of construction. The Navy will collect and evaluate acoustic sound record levels for 10 percent of the new rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering activities conducted as part of P–381 (Table 15). Hydrophones would be placed at locations 10 m (33 ft) from the noise source and, where the potential for Level A harassment exists, at a second representative monitoring location at an intermediate distance between the cetacean and phocid shutdown zones. For the 10 percent of rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering events acoustically measured, 100 percent of the data will be analyzed.

At a minimum, the methodology includes:

- For underwater recordings, a stationary hydrophone system with the ability to measure SPLs will be placed in accordance with NMFS most recent guidance for the collection of source levels.
- Hydroacoustic monitoring will be conducted for 10 percent of each different type of activity not previously monitored as part of P–310 (Table 15). Monitoring will occur from the same locations approved by NMFS for P–310 construction activities. The resulting data set will be analyzed to examine and confirm sound pressure levels and rates of transmission loss for each separate in-water construction activity. With NMFS concurrence, these metrics will be used to recalculate the limits of shutdown and Level B (Behavioral) harassment zones, and to make corresponding adjustments in marine mammal monitoring of these zones for use in the forthcoming rulemaking/LOA application. Hydrophones will be placed in the same manner as for P–310 construction activities. Locations of hydroacoustic recordings will be collected via GPS. A depth sounder and/or weighted tape measure will be used to determine the depth of the water. The hydrophone will be attached to a-weighted nylon cord to maintain a constant depth and distance from the pile/drill/hammer location. The nylon cord or chain will be attached to a float or tied to a static line.
- Each hydrophone (underwater) will be calibrated at the start of each action and will be checked frequently to the applicable standards of the hydrophone manufacturer.
- For each monitored location, a single hydrophone will be suspended midway in the water column in order to evaluate site-specific attenuation and propagation characteristics that may be present throughout the water column.
- Environmental data will be collected, including but not limited to, the following: Wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats, etc.).
- The chief inspector will supply the acoustics specialist with the substrate composition, hammer/drill model and size, hammer/drill energy settings, depth of drilling, and boring rates and any changes to those settings during the monitoring.
- For acoustically monitored construction activities, data from the continuous monitoring locations will be post-processed to obtain the following sound measures:

○ Maximum peak pressure level recorded for all activities, expressed in dB re 1 μPa. This maximum value will originate from the phase of drilling/hammering during which drill/hammer energy was also at maximum (referred to as Level 4).

○ From all activities occurring during the Level 4 phase these additional measures will be made, as appropriate:

- Mean, median, minimum, and maximum RMS pressure level in (dB re 1 μPa)
- mean duration of a pile strike (based on the 90 percent energy criterion)
- number of hammer strikes
- mean, median, minimum, and maximum single strike SEL (dB re μPa² sec)

○ Cumulative SEL as defined by the mean single strike SEL + 10*log (number of hammer strikes) (dB re μPa² sec).

○ Median integration time used to calculate SPL RMS.

○ A frequency spectrum (pressure spectral density) (dB re μPa² per Hz) based on the average of up to eight successive strikes with similar sound. Spectral resolution will be 1 Hz, and the spectrum will cover nominal range from 7 Hz to 20 kHz.

○ Finally, the cumulative SEL will be computed from all the strikes associated with each pile occurring during all phases, *i.e.,* soft start, Level 1 to Level 4. This measure is defined as the sum of all single strike SEL values. The sum is taken of the antilog, with $\log_{10}$ taken of result to express (dB re μPa² sec).

TABLE 17—HYDROACOUSTIC MONITORING SUMMARY

Size	Count	Activity	Number monitored
102-inch	94	Rotary Drill	9
78-inch	94	DTH Cluster Drill	9
42-inch	445	DTH Mono-hammer	10
9-inch	154	DTH Mono-hammer	10
4 to 6-inch	2,701	DTH Mono-hammer	10
NA	252 days	Rock Hammering	10

Marine Mammal Monitoring Reporting

The Navy shall submit a draft report to NMFS within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. The report will detail the monitoring protocol and summarize the data recorded during monitoring. The final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov.* The report must contain the following informational elements, at minimum, (and be included in the Marine Mammal Monitoring Plan), including:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including:

○ How many and what type of piles were driven and by what method (*e.g.,* impact or vibratory); and

○ Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);

- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:

○ PSO who sighted the animal and PSO location and activity at time of sighting;

○ Time of sighting;

○ Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

○ Distance and bearing of each marine mammal observed to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

○ Estimated number of animals (minimum/maximum/best);

○ Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.;

○ Animal's closest point of approach and estimated time spent within the harassment zone; and

○ Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal, if any; and
- All PSO datasheets and/or raw sightings data.

Reporting of Hydroacoustic Monitoring

The Navy shall also submit a draft hydroacoustic monitoring report to NMFS within 60 workdays of the completion of required monitoring at the end of the project. The report will detail the hydroacoustic monitoring protocol and summarize the data recorded during monitoring. The final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. All draft and final hydroacoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov.* The hydroacoustic monitoring report will contain the informational elements described in the Hydroacoustic Monitoring Plan and, at minimum, will include:

- Hydrophone equipment and methods: Recording device, sampling

rate, distance (m) from the pile where recordings were made; depth of water and recording device(s);

- Type and size of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- For impact pile driving and/or DTH excavation (DTH mono-hammer and cluster drill) (per pile): Number of strikes and strike rate; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPLrms); cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s);
- For vibratory driving/removal and/or DTH excavation (DTH mono-hammer and cluster drill) (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 μPa): Root mean square sound pressure level (SPLrms), cumulative sound exposure level (SELcum) (and timeframe over which the sound is averaged); and
- One-third octave band spectrum and power spectral density plot.
- General Daily Site Conditions.
  - Date and time of activities.
  - Water conditions (*e.g.,* sea state, tidal state).
  - Weather conditions (*e.g.,* percent cover, visibility).

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy shall report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301–427–8401) and to the Greater Atlantic Region New England/Mid-Atlantic Stranding Coordinator (866–755–6622) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this rule. The Navy shal not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all of the species listed in Table 3, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impacts of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Construction activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated by pile driving activities, rotary drilling, rock hammering, and DTH. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level A and Level B harassment, identified above, while activities are underway.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. A bubble curtain shall be installed across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI (Figure 2). During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving, rotary drilling, rock hammering and DTH activities are underway. The Navy shall employ the use of three PSOs to ensure all monitoring and shutdown zones are properly observed. For hooded and harp seals which are a rare species in within the project area, we do not anticipate any take by Level A harassment.

The Navy's proposed activities and associated impacts will occur within a limited area. Most of the work will occur behind the existing super flood basin walls that would act as a barrier to sound and would contain underwater noise to within a small portion of the Piscataqua River. Exposures to elevated sound levels produced during pile driving activities may cause behavioral disturbance of some individuals, but they are expected to be mild and temporary and further minimized by the use of a bubble curtain and soft starts. As described previously, the mitigation and monitoring measures are expected to further reduce the likelihood of injury as well as reduce behavioral disturbances.

Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming

speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006). Most likely, individual animals will simply move away from the sound source and be temporarily displaced from the area, although even this reaction has been observed primarily only in association with impact pile driving. The activities analyzed here are similar to numerous other construction activities conducted along both Atlantic and Pacific coasts, which have taken place with no known long-term adverse consequences from behavioral harassment. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Level B harassment will be minimized through use of mitigation measures described herein. including the soft starts and the use of the bubble curtain, which was not quantitatively factored into the take estimates.

Regarding Level A harassment particularly for harbor seals and gray seals, monitoring and shutdown protocols, and a bubble curtain implemented during DTH excavation (DTH mono-hammer and cluster drill) and hydraulic rock hammering would minimize potential for take by Level A harassment. For pinnipeds, the calculated Level A harassment likely overestimates PTS exposure because: (1) Seals are unlikely to remain in the Level A harassment zone underwater long enough to accumulate sufficient exposure to noise resulting in PTS, and (2) the estimate assumes that new seals are in the Level A harassment zone every day during pile driving. Further as discussed above, take by Level A harassment would be minimized due to implementation of monitoring, shutdown procedures and a bubble curtain. Nonetheless, we have considered the potential impacts of these PTS takes occurring in this analysis. The degree of PTS that may incur from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues PTS (or TTS) and is subject to behavioral disturbance would result in impacts to reproduction or survival. If PTS were to occur, it would be at a lower level likely to accrue to a relatively small portion of the population by being a stationary activity in one particular location.

The project is also not expected to have significant adverse effects on any marine mammal habitat. The project activities will not modify existing marine mammal habitat since the project will occur within the same footprint as existing marine infrastructure. Impacts to the immediate substrate are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have any effects on individual marine mammals. The nearshore and intertidal habitat where the project will occur is an area of consistent vessel traffic from Navy and non-Navy vessels, and some local individuals would likely be somewhat habituated to the level of activity in the area, further reducing the likelihood of more severe impacts. The closest pinniped haulout used by harbor and gray seals is 2,414 m (1.5 mi) away on the opposite side of the island and not within the ensonified area. There are no other biologically important areas for marine mammals near the project area.

In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available surrounding habitat. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During construction activities, it is expected that some fish and marine mammals would temporarily leave the area of disturbance, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. But, because of the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or proposed for authorization;
- No Level A harassment is anticipated or proposed for authorization for hooded seals and harp seals;
- Level A harassment proposed for authorization for harbor and gray seals will be minimized with a bubble curtain and shutdown zones and is expected to be of a lower degree that would not impact the fitness of any animals;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The required mitigation measures (*i.e.,* bubble curtain, shutdown zones) are expected to be effective in reducing the effects of the specified activity;
- Minimal impacts to marine mammal habitat/prey are expected;
- The action area is located within an active marine shipyard area,
- There is one pinniped haulouts in the vicinity of the project area, but it is on the opposite side of Seavey Island and not within the ensonified area; and
- There are no known biologically important areas in the vicinity of the project, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and, taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers, so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of five of the marine mammal stocks proposed for authorization will comprise at most approximately 3 percent or less of the stock abundance (Table 16). The number of animals proposed for authorization to be taken from these stocks would be considered small relative to the relevant stock's abundances even if each estimated take occurred to a new individual, which is an unlikely scenario. Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or

species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for the taking of marine mammals incidental to modification and expansion of the Portsmouth Naval Shipyard Dry Dock 1 in Kittery, Maine, effective for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

NMFS requests comment on these analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed issuance of an IHA to the Navy for the taking of marine mammals incidental to modification and expansion of the Portsmouth Naval Shipyard Dry Dock 1 in Kittery, Maine, effective for one year from the date of issuance. NMFS also requests comment on the potential for a renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform NMFS' final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, 1-year IHA renewal with an expedited public comment period (15 days) when: (1) Another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the *Dates and Duration* section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the renewal); and

(2) A preliminary monitoring report showing the results of the required impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 25, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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Part III

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Television Sets; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2016–BT–TP–0023]

RIN 1904–AD70

Energy Conservation Program: Test Procedure for Television Sets

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for television sets to incorporate by reference the relevant updated industry standard. DOE has tentatively determined that the proposed updates would result in a test procedure that is more representative of the average energy use of television sets. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than May 2, 2022. See section [V], ''Public Participation,'' for details. DOE will hold a webinar on Wednesday, April 6, 2022, from 1:00 p.m. to 4:00 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–2016–BT–TP–0023, by any of the following methods:

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

2. *Email:* to *televisions2016tp0023@ee.doe.gov.* Include docket number EERE–2016–BT–TP–0023 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/docket/EERE-2016-BT-TP-0023.* 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:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 506–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *celia.sher@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 standard into part 430: ANSI/CTA–2037–C, *Determination of Television Set Power Consumption,* CTA approved October 2021.

Copies of ANSI/CTA–2037–C can be obtained from: Consumer Technology Association. 1919 S Eads Street, Arlington, VA 22202, 703–907–7600, or by going to *www.cta.tech.*

For a further discussion of this standard, see section IV.M of this document.

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I. Authority and Background

Television sets (''TVs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend test procedures. (42 U.S.C. 6292(a)(12)) DOE's current test procedure for TVs is codified at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix H, ''Uniform Test Method for Measuring the Power Consumption of Television Sets'' (''appendix H''). DOE has not established energy conservation standards for TVs. The following sections discuss DOE's authority to establish test procedures for TVs and relevant background information regarding DOE's consideration of test procedures for this product.

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, which sets forth a variety of provisions designed to improve energy efficiency. These products include TVs, the subject of this document. (42 U.S.C. 6292(a)(12))

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 specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (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. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including TVs, 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 or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) 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. 6293(b)(1)(A))

B. Background

DOE most recently amended its TV test procedures in a final rule published on October 25, 2013 (''October 2013 final rule''). 78 FR 63823. The current DOE test procedure includes methods for measuring TV power consumption in active mode (*i.e.,* on mode), standby mode, and off mode; TV screen luminance; and the annual energy consumption (''AEC'') of TVs. As part of the on mode testing, DOE adopted the use of IEC Standard 62087, Edition 3.0, 2011–04 ''Methods of measurement for the power consumption of audio, video, and related equipment'' (''IEC 62087:2011''). IEC 62087:2011 includes a video test clip on a DVD and Blu-ray Disc™ to be used when conducting on mode testing (''IEC test clip''), as well a static, black-and-white 3-bar image for measuring screen luminance.

Subsequently, on June 24, 2016, DOE published in the **Federal Register** a request for information (''June 2016 RFI'') seeking comments on the existing TV test procedure. 81 FR 41262. In the June 2016 RFI, DOE noted that it found certain TVs consistently demonstrated decreased power use when displaying the IEC test clip as compared to other test clips. *Id.* at 81 FR 41277. DOE noted that this reduction in power consumption was primarily seen in TVs that had motion-based dynamic

[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] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

dimming (''MDD'') functionality [5] turned on during testing, which would reduce the power consumption when playing the IEC test clip because the IEC test clip is composed of short segments of high motion stitched together. *Id.* In the June 2016 RFI, DOE requested comments, information, and data on this topic, as well as: The use of the IEC test clip or other test clips; whether the current luminance test, which uses a static 3-bar image to measure screen luminance, was representative of an average use cycle or period of use, or alternative luminance tests that should be considered; and the default settings of a TV and changes to the default settings and special functions by consumers.

DOE received comments in response to the June 2016 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO JUNE 2016 RFI

Organization(s)	Reference in this NOPR	Commenter type
Appliance Standards Awareness Project and the Northeast Energy Efficiency Partnerships.	ASAP and NEEP	Efficiency Organizations.
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	Utilities.
Consumer Technology Association	CTA	Trade Association.
LG Electronics USA, Inc. [6]	LG	Manufacturer.
Natural Resources Defense Council	NRDC	Efficiency Organization.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Samsung Electronics	Samsung	Manufacturer.

The received comments in response to the June 2016 RFI are addressed throughout this document and a parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

Following the publication of the RFI, on January 19, 2017, DOE posted a pre-publication advance notice of proposed rulemaking (''January 2017 pre-publication ANOPR''),[8] which described potential amendments to the TV test procedure that would address the issues discussed in the RFI as well as a number of other issues, including the configuration of special functions during testing, performing system updates prior to testing, and incorporating updated industry test procedures.[9] (January 2017 pre-publication ANOPR at pp. 6–10) The January 2017 pre-publication ANOPR was intended to assist DOE in determining whether amendments are needed to ensure that the TV test procedure produces results that are representative of an average use cycle or period of use. (*Id.* at p. 5) The January 2017 pre-publication ANOPR was also intended to facilitate discussion, solicit feedback, and provide input to industry consensus standards setting bodies regarding modifications that DOE was considering so that these other organizations can be apprised of DOE's considerations as they undertook their own revisions. (*Id.* at p. 6)

While specific comments received in response to the June 2016 RFI are discussed in relevant sections of this document, DOE received certain comments regarding the overall test procedure at appendix H. NRDC and ASAP and NEEP recommended that the test method be updated to be more representative of current typical viewing conditions to provide a more accurate estimate of TV energy consumption during actual usage. (NRDC, No. 2 at p. 1; ASAP and NEEP, No. 6 at p. 1) CA IOUs expressed concerns regarding whether the current test procedure is representative of actual consumer TV viewing conditions. (CA IOUs, No. 8 at pp. 1–2)

CTA recommended that DOE terminate its test procedure rulemaking process while IEC and CTA update their respective TV test procedures. (CTA, No. 7 at pp. 4–5, 7) CTA stated that DOE's only appropriate role with respect to the TV test procedure is to adopt and incorporate by reference a full-vetted industry-led standard. (*Id.*) CTA asserted that a DOE-specific test procedure would always lag behind technology innovation and would introduce unnecessary burden for TV manufacturers. (*Id.*) CTA stated that the issues discussed in the RFI did not necessitate the completion of a new TV test procedure rulemaking before the IEC standard was updated. (*Id.*) CTA commented that, while a test procedure for TVs should be maintained to keep pace with technology improvements and changes, there were ongoing efforts to update the industry test standards for TV power measurement. (CTA, No. 7 at pp. 2–3) CTA further commented that the IEC standard has been efficiently produced, is being kept up-to-date as technology evolves, and asserted that the industry standard is therefore consistent with DOE regulatory activities and practical considerations. (CTA, No. 7 at p. 4) Samsung similarly commented that all of the issues discussed in the RFI, as well as additional issues not discussed in the RFI, are within the scope of an IEC development process that had already been initiated at the time. (Samsung, No. 5 at pp. 1–2) CTA and Samsung both recommended that DOE participate in the ongoing IEC standards development when considering revisions to appendix H. CTA stated that this approach is required in order to comply with the Office of Management and Budget (''OMB'') Circular A–119. (CTA, No. 7 at pp. 3–5; Samsung, No. 5 at pp. 1–2)

Subsequently, in October 2021, CTA published an update to its TVs power measurement standard, ''Determination of Television Set Power Consumption,''

[5] ANSI/CTA–2037–C defines motion-based dynamic dimming as a television feature that adjusts luminance in response to amount of motion in the displayed image. In practice, MDD dims a TV's backlight when rapid motion or frequent scene changes are displayed on screen.

[6] LG Electronics USA, Inc. submitted a second comment after the close of the comment period.

[7] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking for TVs. (Docket NO. EERE–2016–BT–TP–0023, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[8] The January 2017 pre-publication ANOPR is available at: *www.energy.gov/sites/prod/files/2017/01/f34/tv_tp_anopr_2017-1-19_4.pdf*.

[9] The January 2017 pre-publication ANOPR was not subsequently published in the **Federal Register** due to the Regulatory Freeze Pending Review published on January 24, 2017. 82 FR 8346.

American National Standards Institute (''ANSI'')/CTA–2037–C (''ANSI/CTA–2037–C''), which DOE has tentatively determined addresses many of the concerns DOE raised in the June 2016 RFI as well as many of the comments submitted by NRDC, ASAP and NEEP, CA IOUs, CTA, and Samsung.

DOE has initially determined that ANSI/CTA–2037–C is consistent with the existing metrics and approach incorporated in the TV test procedure at appendix H, while also incorporating provisions that address current industry trends and improve the accuracy and repeatability of the test procedure. ANSI/CTA–2037–C also adopts several changes that were suggested in public comments submitted by interested parties in response to DOE's June 2016 RFI. DOE participated in the CTA standards development process, including providing input and participating in round robin testing to evaluate the CTA standard while under development, and is currently also participating in the IEC standards development process. A test report detailing the results of the round robin testing is available at the ENERGY STAR website (''round robin test report'').[10]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to incorporate by reference into 10 CFR 430.3 the updated industry standard, ANSI/CTA–2037–C, and adopt through reference in appendix H certain provisions of the industry standard that would:

(1) Establish definitions and symbols associated with the updates to the industry standard including those applicable to the new test equipment, TV settings, and video content (*e.g.,* high dynamic range (''HDR''), dynamic luminance, MDD);

(2) Update the specifications required for the power supply, power meter, and illuminance meter, including additional requirements to reduce the voltage and frequency fluctuations in the power supply specifically for on mode testing and requiring the calibration of the illuminance meter to a light-emitting diode (''LED'') illuminant;

(3) Specify the use of a camera photometer for the measurement of dynamic luminance during all on mode testing instead of the usage of a luminance meter only capable of instantaneous luminance measurements;

(4) Update the method for test video storage to a universal serial bus (''USB'') device rather than a Blu-ray Disc played through a media player that does not conduct any video processing;

(5) Specify the automatic brightness control (''ABC'') light source to be an LED lamp rather than an incandescent lamp. Additionally, specify that the ABC light source be positioned at an angle of 45 degrees (''°'') from the ABC sensor. The illuminance meter is also required to be angled at 45° pointed directly at the ABC light source;

(6) Specify detailed unit under test (''UUT'') installation and placement requirements, including the setup of test equipment relative to the UUT and options for placing the TV on the wall or floor, rather than a TV stand or table;

(7) Specify the TV to be updated to the latest firmware version and include configuration requirements for special functions such as MDD and quick start;

(8) Introduce on mode testing for TVs with HDR-enabled, and 4K resolution testing;

(9) Require all on mode and standby mode testing to be conducted with the TV connected to a wide area network (''WAN'') and additionally connected to three types of devices, over local area network (''LAN''), capable for waking the TV: A ''smart'' speaker, mobile device, and device sending multicast discovery packets every 1 second;

(10) Include new test clips for high dynamic range-10 (''HDR10'') format;

(11) Require on mode testing in three different preset picture settings: Standard dynamic range (''SDR'') default, SDR brightest, and HDR10 default, rather than a single test in the default preset picture setting;

(12) Update the ambient light requirements for ABC-enabled testing to 140 lux, 50 lux, 17 lux, and 4 lux, each with a ± 5-percent tolerance;

(13) Specify a single standby mode test during which the TV is connected to WAN and additionally connected to the three types of network devices connected via LAN. The standby test period depends on the stability of the average power consumption of the TV during the last third of the measurement period.

Additionally, DOE proposes to amend the calculation of the AEC metric to incorporate the average on mode power in the SDR default, SDR brightest, and HDR10 default preset picture settings and remove the off mode power consumption.

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 PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Defines terms applicable to the test procedure	References certain definitions from ANSI/CTA–2037–C	Update to industry standard.
Requires power supply and power meter to meet specifications incorporated from IEC 62087:2011	Updates reference to ANSI/CTA–2037–C, with the exception that only the UUT be powered using the AC power supply	Update to industry standard.
Requires a luminance meter for luminance testing of TVs	References ANSI/CTA–2037–C, which specifies the use of a camera photometer	Update to industry standard.
Requires illuminance meter to be accurate for ambient light measurements	References ANSI/CTA–2037–C, which requires the illuminance meter to be calibrated to an LED illuminant	Update to industry standard. Improve representativeness of results.
Requires the playback of specified media from a Blue-Ray player via a Blu-ray Disc	References ANSI/CTA–2037–C, which utilizes a media player and USB storage device to play the specified media	Update to industry standard. Improve representativeness of results.
Requires the ABC light source to be an incandescent bulb for ABC testing	References ANSI/CTA–2037–C, which uses an LED light source for ABC testing	Update to industry standard. Improve representativeness of results.
Requires the light source to be directed at the center of the ABC sensor from 1.5 meters (''m'') away aligned directly with the center of the sensor	References ANSI/CTA–2037–C, which directs the ABC light source at the ABC sensor at an angle of 45°	Update to industry standard. Improve representativeness of results.

[10] Televisions Test Report, April 12, 2021. Available at: *www.energystar.gov/sites/default/files/ENERGY%20STAR%20TVs%20Test%20Report%20-%20April%202021.pdf.*

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE—Continued

Current DOE test procedure	Proposed test procedure	Attribution
Requires the TV to be placed at least 0.5 m away from any wall surface and setup according to manufacturer's instructions	References ANSI/CTA–2037–C, which specifies that the TV must be placed on a table, floor, or wall with a black cloth and reflective card be placed underneath the ABC sensor	Update to industry standard.
Requires the ambient light to be measured by the illuminance meter at the ABC sensor pointing in the direction of the light source	References ANSI/CTA–2037–C, which requires the illuminance meter to be positioned at the ABC sensor on a stand that allows it to point directly at the 45° light source	Update to industry standard. Improve representativeness of results.
Requires TVs to be tested in the default state for all special functions, unless a forced menu is displayed requiring the configuration of special functions, in which case the most power consumption option is selected	References ANSI/CTA–2037–C, which disables MDD, and conditionally enables "quick start." When a forced menu is displayed, the most power consumptive option is selected, with some exceptions	Update to industry standard.
Does not conduct any testing for HDR preset picture settings	References ANSI/CTA–2037–C, which conducts testing in SDR default, SDR brightest, and HDR10 default preset picture settings	Update to industry standard. Improve representativeness of results.
Does not require TVs to update their system firmware prior to testing	References ANSI/CTA–2037–C, which requires the UUT use the latest firmware update and conduct a factory reset	Update to industry standard.
Requires the TV to be connected to a LAN with no other devices other than the TV	References ANSI/CTA–2037–C, which requires the UUT be connected to a WAN and additionally be connected with a smart speaker, mobile device, and a network traffic generator over LAN. These network conditions are required for all on mode and standby mode testing	Update to industry standard. Improve representativeness of results.
Requires the stabilization of the TV by directing the light source with at least 300 lx into the ABC sensor	References ANSI/CTA–2037–C, which requires the TV to be stabilized by playing 5-minutes of the IEC test clip and comparing the average power between two successive runs	Updates to industry standard.
Specifies the use of the IEC test clip (in the highest resolution (SD or HD) supported by the TV) played via a Blu-ray Disc as specified in IEC 62087:2011	References ANSI/CTA–2037–C, which retains the IEC test clip (in SD and HD resolution) but specifies that it must be played via a USB flash drive. Additionally, specifies a new 5-minute HDR10 test clip (in HD and UHD resolution)	Updates to industry standard.
Requires the on mode test to be conducted at ambient light levels of 100, 35, 12, and 3 lux if the TV has ABC enabled by default	References ANSI/CTA–2037–C, which conducts ABC testing for preset picture settings with ABC enabled by default at ambient light levels of 140, 50, 17, and 4 lux	Update to industry standard.
Measures power consumption and luminance separately	References ANSI/CTA–2037–C, which measures power consumption as well as dynamic luminance of the TV during the same test	Update to industry standard.
Requires a luminance test to determine the brightest preset picture setting using the luminance meter and the IEC three-bar image	References ANSI/CTA–2037–C, which determines the SDR brightest preset picture setting by playing the 5-minute IEC test clip in each preset picture setting (with ABC disabled) and determining the brightest based on the dynamic luminance during the 5-minute test period	Update to industry standard.
Specifies standby-passive mode, standby-active mode, low mode, and off mode tests	References ANSI/CTA–2037–C, which conducts a single standby mode test during which the UUT is connected to WAN and additionally connected to three network devices on LAN and the average power consumption is measured for a variable duration, depending on the stability of the power consumption, over a period of 60 to 240 minutes. Additionally, eliminates the off mode test	Update to industry standard. Improve representativeness of results.
Requires the AEC to be calculated using on mode power, standby-active low power, standby-passive power, and off mode power	Requires the AEC to be calculated using the on mode power as the average power of SDR default, SDR brightest, and HDR10 default preset picture settings, as well as the standby mode power consumption	Improves representativeness of results.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would alter the measured efficiency of TVs and would require retesting of TV basic models. The proposed test procedure is substantively the same procedure established by industry, with some modifications. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

This proposed rulemaking applies to TVs, which are products designed to produce dynamic video, contain an internal TV tuner encased within the product housing, and that are capable of receiving dynamic visual content from wired or wireless sources including but not limited to broadcast signals, display-specific data connections, media storage devices, and/or network connections. 10 CFR 430.2. DOE is not proposing to amend the scope of the current TV test procedure.

B. Updates to Industry Standards

Appendix H references IEC 62087:2011 and IEC 62301, Edition 2.0, 2011–04, "Household electrical appliances—Measurement of standby power" ("IEC 62301 Ed. 2.0") for certain requirements, while the remaining requirements are specified in appendix H itself.

The IEC and CTA are two industry standards development bodies that have published standards for testing the power consumption of TVs (*i.e.,* IEC 62087 and CTA 2037, respectively). Since publication of the October 2013 final rule, both of these standards have been updated more than once to keep pace with evolving TV technologies. The most recent update was the publication of ANSI/CTA–2037–C in October 2021; an update to the IEC 62087 standard is currently underway.

In this NOPR, DOE is proposing to incorporate by reference ANSI/CTA–2037–C into 10 CFR 430.3 to reference the relevant sections of this industry standard in the DOE test procedure at appendix H. Since publication of the October 2013 final rule, TV technology has evolved significantly. ANSI/CTA–2037–C addresses many of the technologies (*e.g.,* ultra-high definition (''UHD'') or ''4K'' resolution, HDR, *etc.*) not previously considered in the development of the current DOE test procedure for TVs and also specifies configuration and setup requirements to improve the representativeness with respect to the current DOE test procedure at appendix H.

While standard definition (''SD'') and high definition (''HD'') were the predominant TV display resolutions at the time of the October 2013 final rule, UHD resolution TVs have gained prominence currently, and 8K resolution TVs are emerging. According to Statista, as of March 2021, around 44 percent of U.S. households with TVs have a 4K-capable TV at home, compared to 31 percent in 2019.[11] Additionally, HDR content is more prevalent, and a majority of the TVs are ''smart'' TVs (*i.e.,* they can be connected to a network connection). In 2016, Information Handling Services (''IHS'') Markit estimated that shipments of TVs supporting HDR functionality would increase from 4 million units in 2016 to more than 30 million units in 2020.[12] Hub Entertainment Research estimates that 52 percent of all TVs are reported in 2021 to be smart TVs, up from 45 percent in 2020.[13]

Accordingly, DOE is proposing to adopt by reference the substantive provisions of ANSI/CTA–2037–C, with some modifications in order to provide additional detail and test conditions in order to improve the representativeness of the test results. DOE has initially determined that the measurement of screen luminance and power consumption as specified in ANSI/CTA 2037–C would provide a measured result that is more representative of the average period of use of TVs.

Since publication of the June 2016 RFI, DOE has conducted testing according to appendix H, performed investigative testing to understand TV power consumption and the functions that impact power draw, and also participated in round robin testing to evaluate the ANSI/CTA–2037–C standard while it was under development. The round robin testing demonstrated that power consumption and luminance measurements are reproducible within 5 percent between test labs. DOE's testing also demonstrated that luminance and power consumption measurement are repeatable to within a coefficient of variation (''COV'') of 3 percent. Based on these test results that were presented in the round robin test report, DOE has tentatively determined that ANSI/CTA–2037–C produces measures of energy consumption that are representative of current TV use, and produces results that are repeatable and reproducible.

DOE is also aware that the CTA working group is currently reviewing ANSI/CTA–2037–C to determine if any revisions are necessary. DOE understands that should the working group make any changes to ANSI/CTA–2037–C, CTA would publish a revised standard, potentially numbered as CTA–2037–D. DOE is participating in the working group meetings to review and revise ANSI/CTA–2037–C. While this NOPR proposes to reference the requirements from ANSI/CTA–2037–C, it also discusses the revisions being considered under CTA–2037–D. DOE requests comment on these revisions as well as any additional revisions under consideration in CTA–2037–D that are not discussed in this document. Should CTA–2037–D publish prior to the publication of any DOE TVs test procedure final rule, DOE intends, after considering stakeholder feedback, to incorporate by reference CTA–2037–D provided the updates in this standard are consistent with the provisions DOE is proposing in the NOPR or the updates are related to topics that DOE has discussed and solicited comments in this NOPR. The subsequent sections of this NOPR discuss each substantive change in ANSI/CTA–2037–C that DOE proposes to incorporate into appendix H as well as the updates being considered in CTA–2037–D.

DOE requests comment on its proposal to adopt the substantive provisions of ANSI/CTA–2037–C in appendix H with certain modifications.

C. Definitions

Appendix H includes definitions for certain terms that are also defined in ANSI/CTA–2037–C; other terms are defined in ANSI/CTA–2037–C but are not currently defined in appendix H. The following paragraphs discuss the comments in response to the June 2016 RFI that pertain to definitions in appendix H, DOE's response to these comments, as well as DOE's proposal to reference certain definitions specified in ANSI/CTA–2037–C.

''Preset picture setting'' is defined in section 2.15 of appendix H as ''a preprogrammed factory setting obtained from the TV menu with pre-determined picture parameters such as brightness, contrast, color, sharpness, *etc.* Preset picture settings can be selected within the home or retail mode.'' NEEA commented that the term ''preset picture setting'' could be confusing, since it could potentially refer to both preset picture settings and picture parameters (*e.g.,* brightness, backlight, contrast, *etc.*). NEEA commented that manufacturers typically refer to preset picture settings as picture modes in their onscreen menus and recommended adopting that same terminology to improve clarity in the test procedure. (NEEA, No. 3 at p. 11) ANSI/CTA–2037–C includes a definition for ''preset picture setting'' rather than picture modes. DOE proposes to reference this definition, which defines the term as a picture setting that is selectable by a user from a set of manufacturer-defined picture settings. DOE has initially determined that the term as provided in the CTA standard reflects industry use and understanding of the term and proposes to adopt the term in the DOE test procedure through reference to ANSI/CTA–2037–C.

The term ''prompt'' is used in section 5.5 of appendix H as follows: If at any time during on mode operation a message prompt is displayed requesting the configuration of special functions, the most power consumptive configuration shall be selected. LG commented that DOE should clarify the term ''prompt'' in the test procedure, since it may be interpreted that the opportunity to change a setting is the same as ''prompting'' the consumer to change a setting. LG suggested the following definition: ''Prompt means action or suggestion that encourages

[11] *4K Ultra HDTV household penetration in the United States in 2019 and 2021.* October 19, 2021. Available at: *www.statista.com/statistics/1247334/4k-ultra-hdtv-us-household-penetration/.*

[12] *IHS Study: 4K Ultra HD HDR to take Major TV Market Share by 2020.* October 12, 2016. Available at: *hdguru.com/ihs-study-4k-ultra-hd-hdr-to-take-major-tv-market-share-by-2020/.*

[13] *Report: Smart TVs Account For 50% of TVs Overall; Found in 70% of TV Homes.* April 7, 2021 Available at: *www.mediaplaynews.com/report-smart-tvs-account-for-50-percent-of-tvs-overall-found-in-70-percent-tv-homes/.*

users to make a particular selection.'' (LG, No. 4 at p. 5) In the ANSI/CTA–2037–C standard, which DOE proposes to reference to test TV power consumption, the word ''prompted'' is used in the definition of the term ''forced menu [14]'' and in Section 9.2 (Initial Steps) in the instruction to ''Proceed through initial set-up prompts'' after powering on the UUT. DOE has tentatively determined that the definition of ''forced menu'' provides the necessary context for the term ''prompt'' to be understood as an action that the user must take for initial configuration setup. Therefore, DOE is not proposing to define ''prompt.''

The definitions currently specified in appendix H are either provided directly or through adoption of certain definitions provided in IEC 62087:2011. However, many of these terms are also defined in ANSI/CTA–2037–C. Table III.1 identifies the terms that are currently used in appendix H and ANSI/CTA–2037–C, the similarities and differences in their respective definitions, and whether DOE proposes to adopt each definition through reference to ANSI/CTA–2037–C.

TABLE III.1—TERMS CURRENTLY USED IN APPENDIX H AND ANSI/CTA–2037–C AND THE SIMILARITIES OR DIFFERENCES BETWEEN DEFINITIONS

Terms currently in Appendix H	Terms currently in ANSI/CTA–2037–C	Similarities/differences between definitions	Adopt by reference to ANSI/CTA–2037–C for Appendix H?
Brightest selectable preset picture setting.	Brightest selectable preset picture setting.	Appendix H refers to the brightest picture setting within either the home or retail configuration, whereas ANSI/CTA–2037–C refers only to the brightest preset picture setting within the home configuration. ANSI/CTA–2037–C additionally specifies that this is a user-selectable preset picture setting.	Yes.
Default picture setting	Default picture setting	ANSI/CTA–2037–C specifies that this picture setting is determined using only the home configuration. appendix H indicates the default picture setting may be decided after a forced menu, which ANSI/CTA–2037–C does not mention.	Yes.
Forced menu	Forced menu	Substantively the same definitions	Yes.
Home configuration	Home configuration	Substantively the same definitions	Yes.
Illuminance	Illuminance	Substantively the same definitions	Yes.
Luminance	Luminance	Substantively the same definitions	Yes.
Main battery	Main battery	Substantively the same definitions	Yes.
Off mode	Off mode	ANSI/CTA–2037–C provides a note that describes how some power may still be consumed when the UUT is in off mode. Appendix H does not include such a note.	Yes.
On mode	On mode	Similar definitions	Yes.
Preset picture setting	Preset picture setting	Appendix H provides details on the specific parameters that may be determined by the preset picture setting.	Yes.
Standby-passive mode	Standby-passive mode	Similar definitions	Yes.
Additional functions		Not listed in the definitions section of ANSI/CTA–2037–C	No.
Auxiliary Battery		Not listed in the definitions section of ANSI/CTA–2037–C	No.
Retail configuration		Not listed in the definitions section of ANSI/CTA–2037–C, however Section 9.2 of ANSI/CTA–2037–C specifies that, ''the UUT shall be configured in home configuration.'' No mention of retail configuration exists in ANSI/CTA–2037–C.	No.
Special functions		Not listed in the definitions section of ANSI/CTA–2037–C. The term special functions is not used anywhere in ANSI/CTA–2037–C.	No.
Standby-active, high mode		Standby-active, high and Standby-active, low modes have been combined into a single Standby-active mode definition in ANSI/CTA–2037–C. In ANSI/CTA–2037–C, standby-active mode differs from Standby-passive mode by allowing the UUT to be switched into another power mode using an external signal in standby-active mode.	No.
Standby-active, low mode		See above	No.
(not defined)	Automatic brightness control	This term is used frequently in ANSI/CTA–2037–C	Yes.
(not defined)	Dynamic Luminance	This term defines the TV screen's luminance as measured during the playback of dynamic video content.	Yes.
(not defined)	Energy-Efficient-Ethernet	This term is used in the Network connection hierarchy in both ANSI/CTA–2037–C and appendix H. H.	Yes.
(not defined)	Filmmaker Mode	This term is defined in ANSI/CTA–2037–C but is not referenced elsewhere within the test method.	No.
(not defined)	HDR10	This term defines a specific video display format that is used to test the UUTs power consumption.	Yes.
(not defined)	High-definition multimedia interface (''HDMI®'').	This term defines a video input terminal for TVs. It is defined at 10 CFR 430.2; therefore, it does not need to be defined in appendix H.	No.
(not defined)	High Dynamic Range (''HDR'')	This term more broadly defines the video format category that HDR10 belongs to.	Yes.
(not defined)	Hybrid Log Gamma (''HLG'')	This term defines a type of HDR video and is used when describing the test signals used during testing.	Yes.
(not defined)	International System of Units	This is defined as ''The modern form of the metric system''. This term does not need to be defined in appendix H since it is a generally understood term.	No.
(not defined)	Motion-Based Dynamic Dimming (''MDD'').	This term defines a television feature that adjusts luminance in response to motion being displayed and is disabled during TV testing.	Yes.
(not defined)	Neutral density (''ND'') filter	This term is used to define the filter that is used to accomplish the 3 lux luminance requirement for on mode testing.	Yes
(not defined)	Partial on mode	This term defines the standby sub-modes	Yes.
(not defined)	Perceptual Quantization Video	This term defines a specific video utilized by HDR. It is not referenced elsewhere in ANSI/CTA–2037–C.	No.

[14] In Section 5.1 of ANSI/CTA–2037–C, ''forced menu'' is defined as: Configuration selections required of the user when a Television Set is turned on for the first time that force the user to make set-up configuration decisions when prompted.

TABLE III.1—TERMS CURRENTLY USED IN APPENDIX H AND ANSI/CTA–2037–C AND THE SIMILARITIES OR DIFFERENCES BETWEEN DEFINITIONS—Continued

Terms currently in Appendix H	Terms currently in ANSI/CTA–2037–C	Similarities/differences between definitions	Adopt by reference to ANSI/CTA–2037–C for Appendix H?
(not defined)	Power Modes	This term identifies all the various power modes: Off mode, on mode, partial on mode, which includes standby-passive and standby-active). The generic term power mode is not referenced elsewhere in ANSI/CTA–2037–C.	No.
(not defined)	Quick start	This term defines quick start functionality, which is a special function that impacts the time it takes for a TV to transition to on mode from partial on mode.	Yes.
(not defined)	Snoot	This term defines an object used to prevent the ABC lamp light from reflecting off the UUT and interfering with the dynamic luminance data collection. It is not a required tool but may be needed for testing in specific instances.	Yes.
(not defined)	Stand	This term defines the device used to hold the UUT upright. This term is not included in the TV test procedure since it is a generally understood term.	No.
(not defined)	Standby-Active Mode	This term defines a power mode where the UUT does not provide picture or sound but can be switched into another power mode with the remote control, an internal signal, or an external signal. The external signal is what differentiates standby-active mode from standby-passive mode.	Yes.
(not defined)	Standby-Passive Mode	This term defines a power mode where the UUT does not provide picture or sound but can be switched into another power mode with the remote control or an internal signal but not an external signal.	Yes.
(not defined)	Television set	This term is defined at 10 CFR 430.2; therefore, it does not need to be defined in appendix H.	No.
(not defined)	Wake-By-Remote-Control-App	This term defines the ability to wake a UUT using a network-connected device and is used during standby mode testing.	Yes.
(not defined)	Wake-By-Smart-Speaker	This term defines the ability to wake a UUT using a voice command via smart speaker and is used during standby mode testing.	Yes.
(not defined)	Wake-On-Cast	This term defines the ability to wake a UUT by streaming a video from a mobile device to the UUT and is used during standby mode testing.	Yes.

While some of the defined terms in ANSI/CTA–2037–C have minor differences compared to the current definitions in appendix H, DOE has initially determined that these differences are not substantive and would not change the meaning of the defined terms or impact testing according to the proposed test procedure compared to the current test procedure. Accordingly, to harmonize with the current industry standard, DOE proposes to reference Section 5.1 of ANSI/CTA–2037–C for the definitions of the terms used in the TV test procedure. DOE also proposes to reference Section 5.2 of ANSI/CTA–2037–C to include the relevant abbreviations that are used in the TV test procedure. Further, for the terms that are currently defined in appendix H but a definition does not exist in ANSI/CTA–2037–C (*e.g.,* additional functions, auxiliary battery, retail configuration, special functions, standby-active, high mode, and standby-active, low mode) DOE proposes to remove these terms from appendix H because they are not referenced in ANSI/CTA–2037–C nor used anywhere in the proposed test procedure.

Finally, DOE notes that the CTA working group is considering revising definitions for power modes (*i.e.,* on mode, partial on mode, *etc.*). In particular, the working group is considering deleting the definitions for off, standby-active, and standby-passive modes and updating the definition of partial on mode to specify that it is a mode in which the TV is connected to an external power source, does not provide picture or sound, and can be switched into another mode with a remote control. The definition under consideration for partial on mode in CTA–2037–D aligns, in part, with the current definitions specified in ANSI/CTA–2037–C for standby-passive and standby-active modes, which are sub-modes of partial on mode. In general, the CTA working group intends to update all references to standby mode as partial on mode. The working group also does not intend to differentiate between standby-active and standby-passive modes in CTA–2037–D, but the standard would require that the partial on mode power consumption be captured under one of three parameters depending on the type of functionality that is supported during the partial on mode test (as discussed further in section III.G.3 of this document). DOE notes that although the CTA working group is considering using the term 'partial on mode' throughout CTA–2037–D, DOE would refer to this mode as 'standby mode', if CTA–2037–D were to be finalized with 'partial on mode' as the defined term. DOE may consider additional definitions for sub-modes within standby mode, if necessary. These would include definitions for terms such as standby-passive and standby-active, which DOE is proposing to reference from ANSI/CTA–2037–C in this document.

DOE requests comment on defining the identified terms in appendix H through reference to ANSI/CTA–2037–C.

DOE also requests comment on whether it should consider the revisions to the power mode definitions that are under consideration by the CTA working group for CTA–2037–D.

D. Test Equipment

1. Power Supply

Sections 3.1 and 3.2 of appendix H reference Section 4.3.1 of IEC 62301 Ed. 2.0 for the voltage and frequency and power supply requirements for testing TVs. The requirements specify that the voltage and frequency for each region within North America must have a voltage of 115 volts (''V'') and frequency of 60 hertz (''Hz''). IEC 62301 Ed. 2.0 additionally includes requirements for other regions around the world.

Section 7.1.1 of ANSI/CTA–2037–C only specifies the North American-specific requirements; however, these requirements are specified under the standby mode power supply requirements rather than on mode. The CTA working group is considering moving these requirements under the power supply requirements for on mode in CTA–2037–D. DOE expects that the same power supply is used to test on mode and standby mode power consumption and the specific location of where the requirement is specified would not alter the power supply that is used to test a TV.

Additionally, given that DOE's test procedure is applicable to only those TVs that are a type which, to any significant extent, are distributed in commerce in the United States for personal use or consumption by individuals (42 U.S.C. 6291(1); 42 U.S.C. 6292(a)(12); 42 U.S.C.), the North American-specific requirements specified in ANSI/CTA–2037–C are sufficient for the DOE test procedure. Therefore, DOE proposes to reference Section 7.1.1 of ANSI/CTA–2037–C for the alternating current (''AC'') power supply specification.

Section 3.2 of appendix H additionally specifies that the total harmonic distortion of the supply voltage must not exceed 5 percent, inclusive to the 13th order harmonic, when the unit is under test. Section 7.1.1 of ANSI/CTA–2037–C specifies that the total harmonic distortion must not exceed 2 percent up to and including the 13th harmonic.

DOE proposes to reference the power supply requirements from ANSI/CTA–2037–C. While the total harmonic distortion specification is more stringent in ANSI/CTA–2037–C, based on its internal testing and general agreement from manufacturers during the ANSI/CTA–2037–C development working group meetings, DOE has initially determined that most power supplies are capable of meeting this requirement; thus, DOE expects that most, if not all, power supplies currently used for TV testing are able to meet the requirements specified in ANSI/CTA–2037–C. Therefore, DOE does not expect the proposed reference to the power supply requirements would result in additional burden.

The introductory text in Section 9 of ANSI/CTA–2037–C states that power shall be provided to the ABC lamp, camera photometer, and UUT from the specified AC power source. DOE has initially determined that using the same AC power source to power the UUT as well as the ABC lamp and camera photometer could unintentionally impact the power consumption measurement of the UUT due to ''noise'' from the ABC light source and fluctuations in power draw caused by the camera photometer and ABC light source. Additionally, the CTA working group is considering revising this requirement for CTA–2037–D to specify that only the UUT be powered using the power source specified in Section 7.1.1 of the CTA–2037 standard, the camera photometer and lamp must not be powered by the same controlled power source, and that the camera photometer and lamp may be powered by mains power. Accordingly, DOE proposes to specify that TVs must be tested with only the UUT powered by the specified AC power source. The camera photometer and ABC lamp may be powered using standard mains electricity.

DOE requests comment on referencing Section 7.1.1 of ANSI/CTA–2037–C for the power supply requirements. DOE also requests comment on referencing the updated requirements that are under consideration for CTA–2037–D, which would move the voltage and frequency requirements for the power supply from the standby mode to on mode section within Section 7.1.1 of the CTA–2037 standard.

DOE requests comment on its proposal to connect only the UUT to the specified AC power source during testing and to specify that the camera photometer and ABC lamp may be powered via mains power. DOE also requests feedback on whether the camera photometer and ABC lamp should be connected to additional specified AC power sources and the burden versus benefit of such an approach.

2. Power Meter

The power meter requirements specified in section 3.3 of appendix H are the same as the requirements specified in Section 7.1.2 of ANSI/CTA–2037–C, which includes the specification of a wattmeter as well as the allowable uncertainty in measurement. ANSI/CTA–2037–C additionally specifies calibration requirements for the power meter, the current crest factor, and the lower bound on the current range. Accordingly, DOE proposes to reference Section 7.1.2 of ANSI/CTA–2037–C for the power meter requirements because it includes the requirements currently specified in appendix H, and the additional requirements specified would ensure that the power meter remains within bounds and calibrated to ensure the results obtained are valid and representative. Based on feedback from manufacturers and test labs during the ANSI/CTA–2037–C working group meetings, DOE understands that the additional requirements would not add substantive burden in sourcing a power meter.

DOE requests comment on its proposal to reference the power meter requirements from ANSI/CTA–2037–C. Specifically, DOE requests feedback on the potential burden, if any, to meet the more stringent requirements specified in ANSI/CTA–2037–C.

3. Luminance Meter

Section 3.4 of appendix H specifies the accuracy requirements for a luminance meter, which is used to measure screen luminance in the default and brightest preset picture settings as well as the default retail picture setting. The current luminance measurement is performed using the static, 3-bar black-and-white image from IEC 62087:2011. This static black-and-white image does not result in representative luminance measurements because TVs are rarely used to display static images (*i.e.,* the content played on TVs is almost always dynamic, or in motion) and pure white color is rarely displayed on a TV screen (*i.e.,* most scenes displayed on a TV screen are a mix of various colors); therefore, measuring luminance using the black-and-white image is not representative of typical consumer use. DOE is therefore proposing to measure dynamic screen luminance (*i.e.,* luminance of the screen when playing dynamic video content such as the IEC test clip) as specified in ANSI/CTA–2037–C to ensure that a TV's screen luminance is measured at the same time as its power consumption, which would provide consumers a direct relationship for TV brightness (*i.e.,* luminance) as a function of its power consumption. DOE has initially determined that a dynamic screen luminance measurement would provide results that are more representative of real-world in comparison to the currently specified static black-and-white image.

In general, a luminance meter cannot measure dynamic screen luminance; instead, ANSI/CTA–2037–C specifies use of a camera photometer to measure the dynamic luminance of the TV screen during each on mode test. The camera photometer captures the light from the TV screen while displaying video content, and the average of the light entering the camera photometer's sensor in each frame is translated into the average luminance of the TV screen. In conjunction with the proposal to measure dynamic screen luminance, DOE proposes to remove the existing luminance meter requirements specified

in section 3.4 of appendix H and instead reference Section 7.1.4 of ANSI/CTA–2037–C, which specifies the requirements for the camera photometer's uncertainty, resolution, sample area, and data rate.

Additionally, the CTA working group is considering specifying an additional requirement in CTA–2037–D that the camera used for testing should be calibrated against a traceable light source that more closely matches the spectral power density of LED/OLED TVs than does standard illuminant A (*e.g.,* D65, LED–RGB1).

DOE requests comment on its proposal to measure dynamic screen luminance and to specify use of a camera photometer to measure dynamic screen luminance. In particular, DOE requests comment on any concerns with the burden associated with using a camera photometer as specified by ANSI/CTA–2037–C to measure screen luminance.

DOE also requests comment on the additional calibration requirement under consideration for CTA–2037–D and whether DOE should include this requirement for its TVs test procedure.

4. Illuminance Meter

Section 3.5 of appendix H specifies accuracy requirements for the illuminance meter, which is used to measure the room illuminance levels at the ABC sensor for tests that are conducted with ABC on. Section 7.1.3 of ANSI/CTA–2037–C specifies the same accuracy requirements for an illuminance meter and additionally specifies calibration requirements for the illuminance meter. Additionally, ANSI/CTA–2037–C specifies certain requirements if the illuminance meter is neither a spectroradiometer nor calibrated against an illuminant replicating the spectral emissions of LEDs. However, the CTA working group is re-evaluating these requirements.

The CTA working group is considering reducing some of the requirements to ease test burden by clarifying that only specific requirements of the calibration standard must be met. These requirements are for the illuminance meter accuracy and relative spectral response. An additional requirement is also being considered which would require the center of the cosine receptor to be ≤ 40mm in depth.

DOE has initially determined that the illuminance meter requirements specified in Section 7.1.3 of ANSI/CTA–2037–C are appropriate because DOE is proposing that an LED lamp be used for ABC testing rather than an incandescent lamp as specified currently in appendix H (see section III.D.6 of this document for more detail). However, DOE will continue evaluating the updated language that is under consideration by the CTA working group. At this time DOE proposes to reference Section 7.1.3 of ANSI/CTA–2037–C for the illuminance meter requirements.

DOE requests comment on its proposal to reference the illuminance meter requirements, including the calibration requirements, from ANSI/CTA–2037–C.

DOE also requests comment on the updated illuminance meter requirements under consideration for CTA–2037–D, whether DOE should consider referencing the updated requirements when finalized, and the reason(s) for doing so.

5. Video Input Device

Section 3.6 of appendix H contains video input device requirements that specify the use of a Blu-ray player and requires that the video input device manufacturer be different from the manufacturer of the UUT. ANSI/CTA–2037–C specifies the use of a USB flash drive [15] to play the IEC test clips. Specifically, Sections 7.1.5 through 7.1.7 of ANSI/CTA–2037–C specify the use of a USB 3.0 flash drive that stores the test clips for playback and a separate media player that contains a USB port to send media to the UUT via an HDMI cable. ANSI/CTA–2037–C specifies that the media player must have a video setting that does not perform any video processing (*e.g.,* noise reduction, upscaling, or adjustment of color, hue, contrast, or brightness). ANSI/CTA–2037–C does not include the requirement that the manufacturers for the media player and UUT must be different.

ANSI/CTA–2037–C additionally requires that all media must be stored and played from a FAT32 or ExFAT [16]-formatted USB flash drive via the USB port in the media player. ANSI/CTA–2037–C requires that the test clips stored on the USB flash drive are played via a USB port on a media player instead of the designated USB port on a UUT. During ANSI/CTA–2037–C working group meetings, stakeholders noted that some TVs may alter the default picture setting if the media is played using the USB port on the TV rather than a media player connected via HDMI. By storing the media on a USB flash drive and playing through a media player, any video processing from the UUT would be avoided.

DOE proposes to reference the video media player requirements from ANSI/CTA–2037–C. DOE has conducted testing using both the Blu-ray Disc played via a Blu-ray player and the USB flash drive played via a Blu-ray player. DOE has not found any difference in playing the content via a USB flash drive connected to the Blu-ray player versus a Blu-ray Disc played via the Blu-ray player with video processing turned off on the Blu-ray player. DOE proposes to align with the ANSI/CTA–2037–C requirements.

As described, section 3.6 of appendix H specifies that the Blu-ray player manufacturer shall be different from the manufacturer of the UUT to prevent device interaction. ANSI/CTA–2037–C does not include this requirement. DOE requests comment on whether it should maintain the current requirement that the UUT and media player are from different manufacturers.

DOE requests comment on its proposal to reference the media player and USB flash drive requirements from ANSI/CTA–2037–C. DOE also requests comment on whether DOE should maintain the current requirement that the media player and UUT must not be from the same manufacturer.

6. Light Source for ABC Testing

For conducting tests for TVs with ABC enabled by default, appendix H requires the use of a lamp to alter the amount of light that is directed to the ABC sensor of the TV. Section 7.1.3.3 of appendix H specifies that the ABC lamp must be a standard spectrum, halogen incandescent aluminized reflector lamp and also includes specifications for the lamp diameter, beam angle, and center beam candlepower. Such a light source is used in conjunction with a variable transformer to control the brightness of the lamp, which in turn controls the illuminance at the ABC sensor. This setup measures TV power consumption at different room ambient conditions, reflective of use wherein sometimes TVs are used in a bright room (*e.g.,* during the day) while other times they would be used in a dark room (*e.g.,* at night or with room lights turned off).

Section 7.1.9 of ANSI/CTA–2037–C specifies the ABC light source requirements, namely that an LED reflector lamp with dimmer switch must be used to provide the specified room illuminance levels. The industry test standard specifies an LED rather than incandescent lamp in response to the growing market for in-home LED lighting. Section 7.1.9 of ANSI/CTA–2037–C additionally specifies the

[15] ANSI/CTA–2037–C refers to a USB flash drive as a ''USB thumb drive'' and a ''USB stick.''

[16] FAT32 and ExFAT refer to file allocation formatting systems for storage devices such as USB flash drives. FAT32 means 32-bit version of FAT file allocation table system. exFAT means extensible file allocation table.

diameter, rated beam angle, correlated color temperature, and color rendering index of the lamp. Further, it specifies a 1-percent allowable tolerance in illuminance measurement and the use of a neutral density (''ND'') filter to reach illuminance levels less than 10 lux, which are consistent with the current requirements in appendix H. DOE has conducted testing using such an LED lamp and did not find any substantive differences in the test conduct compared to using an incandescent lamp. DOE proposes to reference Section 7.1.9 of ANSI/CTA–2037–C for the ABC light source requirements.

DOE requests comment on its proposal to reference Section 7.1.9 of ANSI/CTA–2037–C for the light source required for conducting tests with ABC enabled.

E. Test Room Setup

1. Room Ambient Conditions

Sections 4.1 and 4.2 of appendix H specify the ambient temperature and relative humidity conditions of the test room, respectively. The temperature conditions reference Section 11.4.1 of IEC 62087:2011, which specifies a requirement of 23 degrees Celsius (''°C'') ±5 °C. Section 4.2 of appendix H specifies that the ambient relative humidity must be maintained between 10 percent and 80 percent. Section 7.3 of ANSI/CTA–2037–C specifies the same ambient test room and relative humidity requirements. DOE proposes to reference these requirements from ANSI/CTA–2037–C.

DOE requests comment on whether the specified ambient temperature and humidity requirements are adequate or whether the temperature and relative humidity specifications should include additional specification regarding the precision and/or accuracy of the instruments used to verify that the required ambient conditions are maintained.

2. Room Illuminance Level

Section 4.3 of appendix H specifies that all luminance and on mode testing must be performed in a room with an illuminance level less than or equal to 1.0 lux measured at the UUT's ABC sensor while the TV is in off mode or standby mode. Section 7.4 of ANSI/CTA–2037–C specifies the same requirement but includes an additional requirement regarding the positioning of the illuminance meter used for this measurement (*i.e.,* the illuminance meter must be positioned at the ABC sensor in the same manner as it would be positioned during luminance and power measurement tests). As this requirement is generally the same between appendix H and ANSI/CTA–2037–C, but with additional specificity regarding meter placement, which would further ensure repeatability and reproducibility of the test results, DOE proposes to reference Section 7.4 of ANSI/CTA–2037–C for the room illuminance level.

DOE requests comment on its proposal to reference Section 7.4 of ANSI/CTA–2037–C for the room illuminance level and requirement to position the illuminance meter in the same manner as it would be positioned during luminance and power measurement tests.

3. UUT Installation and Placement

Section 4.4 of appendix H specifies that the UUT must be installed in accordance with manufacturer's instructions. Additionally, section 4.5 of appendix H includes requirements for TV placement, which specifies that TVs tested with ABC enabled must be placed at least 0.5 meters away from any wall surface and that all four corners of the face of the TV must be placed equidistant from a vertical reference plane.

DOE notes that many manufacturers provide instructions for multiple installation configurations for the TV, such as stand mounted and wall mounted, and do not specify a single method as a recommended or preferred approach.

Section 8 of ANSI/CTA–2037–C specifies the installation and setup requirements for the UUT as well as all other test equipment relative to the placement of the TV. Specifically, ANSI/CTA–2037–C Sections 8.2. 8.2.2, and 8.2.3 provide instructions on installing a UUT for testing, including a preference for installing a TV using a stand mount if possible; if not, using a wall mount; and if the UUT is neither stand-mounted nor wall-mounted (*e.g.,* permanently mounted in a wheeled furniture stand), special case installation instructions are specified in which the UUT assembly (including whatever support mechanisms or furniture that are part of the UUT) are positioned on a floor. Section 8.2.4 specifies requirements for positioning the ABC sensor relative to the UUT for cases where the UUT has an ABC sensor that is not permanently mounted on the display (*e.g.,* in an external enclosure or sound bar).

Additionally, ANSI/CTA–2037–C describes the requirements for the placement of the LED lamp, camera photometer, and illuminance meter relative to the UUT. Currently, when testing according to appendix H, the incandescent lamp used for ABC testing is pointed directly at the ABC sensor and placed 1.5 meters from the center of the ABC sensor, as specified in section 7.1.3.4 of appendix H. ANSI/CTA–2037–C specifies placing the LED lamp at a 45° angle pointed at the ABC sensor and also specifies requirements to ensure that light is not reflected off the TV screen. DOE tentatively finds that positioning the lamp at an angle rather than directly in front of the sensor would be more representative of real world conditions, as lighting is generally not placed such that a lamp shines directly towards the ABC sensor; instead, any light reaching the sensor is generally directed at the TV screen at an angle, either from overhead lighting or floor lamps. DOE has conducted testing with the LED lamp placed at a 45° angle and has tentatively determined that this setup is achievable and provides results that are repeatable. Subsequent to when DOE performed its investigative testing, the ANSI/CTA–2037–C test procedure was further revised to include more detailed setup instructions, including specifying a lamp angle tolerance of 2° and providing additional instructions in order to position the lamp angle precisely. DOE is proposing to adapt the requirements specified in ANSI/CTA–2037–C regarding lamp setup.

Further, Section 8.1.2 of ANSI/CTA–2037–C details the orientation and placement of the illuminance meter. Section 7.1.3.5 of appendix H provides general instruction for the illuminance meter placement, stating that the meter must be positioned at the ABC sensor in the direction of the light source. ANSI/CTA–2037–C specifies that the illuminance meter must be oriented at an angle of 45° to be aimed directly at the light source, which is also oriented at 45° relative to, and pointing towards, the ABC sensor. ANSI/CTA–2037–C also requires a firm stationary mount for the illuminance meter to allow for consistent measurement of the illuminance. The requirements in Section 8.1.2 of ANSI/CTA–2037–C are similar to the requirements in section 7.1.3.5 of appendix H, but include additional direction on mounting the illuminance meter and the specific orientation of the light reception dome. DOE proposes to reference these additional requirements for the illuminance meter setup within revised Section 3 (Test Setup) of appendix H.

Section 8.2.5 of ANSI/CTA–2037–C specifies detailed instructions for the placement and setup of the camera photometer, which is used for dynamic luminance measurement. The placement of the camera photometer is

dependent on the size of the UUT. The distance between the camera photometer and the TV is proportional to the width of the TV, and the height of the camera photometer is always in the center of the height of the TV. The orientation is 0° with respect to the TV screen, with a 5° tolerance. Section 8.2.5 of ANSI/CTA–2037–C also provides instructions for how to prevent the moiré effect [17] by defocusing the camera photometer appropriately. DOE proposes to reference the ANSI/CTA–2037–C requirements for the placement and setup of the camera photometer. DOE has conducted testing using this setup and has tentatively found this setup provides for a measurement of screen luminance in a repeatable manner.

Finally, Sections 7.1.10 and 8.2.1 of ANSI/CTA–2037–C also include additional requirements regarding the table surface on which the UUT is placed for testing. This includes the specifications for covering the table with black, non-reflective cloth and placing a reflective card directly underneath the ABC sensor of the UUT. The reflective card is used to better redirect light from the ABC lamp into the ABC sensor, given the 45° angle of the ABC lamp. DOE proposes to reference these requirements in the test room setup section of appendix H. While DOE proposes to reference these requirements, DOE is aware that the CTA working group is considering amending this requirement to specify that a 'minimally reflective cloth' (such as, black felt) rather than a 'non-reflective cloth' be used for testing. Accordingly, DOE requests feedback on whether it is appropriate to refer to the cloth as ''non-reflective'' or if it should use the term ''minimally reflective'' instead, since no material is truly non-reflective.

DOE requests comment on its proposal to reference all the requirements specified in Section 8 of ANSI/CTA–2037–C for the test room setup. These include the setup of the UUT, illuminance meter, camera photometer, table surface, and reflective card.

DOE also requests comment on whether it is appropriate to specify that the table surface must be covered with black, non-reflective cloth or whether DOE should specify a ''minimally reflective'' cloth instead.

[17] The moiré effect refers to a visual perception that occurs when viewing the dots of the LEDs in the UUT superimposed on the pixels captured from the camera photometer. The overlapped patterns can cause a glare in the recorded image, which can impact results if not corrected for.

F. Test Configuration

1. Configuration of Special Functions

Section 5 of appendix H specifies configuration requirements for various TV functions such as: Additional functions and special functions; the setup of the TV when presented with forced menu prompts; a connection priority to be used for connecting the TV to the video input device; the selection of the preset picture setting for on mode tests; video aspect ratio; frame rate; sound level; and network connection configuration. For many of these requirements, appendix H references the requirements specified in relevant sections of IEC 62087:2011. The requirements specified in appendix H are also consistent with earlier versions of the ANSI/CTA–2037 standard.

As TV technology has evolved, the configuration requirements currently specified in appendix H may not be as representative of current TV use. Additionally, as noted in the June 2016 RFI, special functions such as MDD often trigger a more significant decrease in power consumption when testing with the IEC test clip compared to other real-world media content. In the June 2016 RFI, DOE requested comment on how frequently users operate a TV in the default setting, the use of MDD in specific preset picture settings, as well as the setup from forced menu prompts. 81 FR 41278–41279. In response, DOE received the following stakeholder comments.

Samsung commented that MDD is enabled by default and remains ''on'' in the default picture setting. Samsung stated that MDD is not enabled by default in the other user-selectable preset picture settings, but that the user is informed that these preset picture settings do not have MDD enabled by default. Samsung recommended that instead of disabling energy-saving features such as MDD during testing, such features should remain in their default state, which is generally enabled in the default picture setting. (Samsung, No. 5 at pp. 2–3)

NRDC commented regarding the quick start special function, recommending that if a TV has a quick start option and a normal resume time greater than 10 seconds, DOE should amend the test procedure such that the TV is tested with quick start turned on, even if the TV is shipped with this function disabled. (NRDC, No. 2 at p. 16)

The CA IOUs commented that some TVs may have features that result in a measured power consumption during DOE testing that is less than the power consumed during real-world operation. The CA IOUs recommended that if MDD features are not intended to be enabled for most viewing, then they should not be enabled in the DOE test procedure. The CA IOUs recommended that DOE address these issues with an updated test procedure to ensure that these features are configured as they would be in the home. The CA IOUs further recommended that if there is ambiguity about how a given setting should be configured, the most power-consumptive option should be chosen. (CA IOUs, No. 8 at pp. 3–5)

NRDC recommended that DOE clarify in the test method how to address software updates, both for an update that might occur when the TV is initially set up and for those updates that happen at a later time. NRDC recommended that if a software update causes a TV's power use to change more than a small amount, then the TV must be retested and recertified. (NRDC, No. 2 at p. 17)

ANSI/CTA–2037–C provides setup requirements for functions including quick start, MDD, and forced menus. Section 9.1 of ANSI/CTA–2037–C specifies that the UUT must operate on the latest manufacturer-supplied firmware and requires a factory reset to ensure the TV is configured with the most recent firmware update.

Section 9.2 of ANSI/CTA–2037–C specifies instructions for the initial configuration of the UUT, including how to adjust according to initial setup and forced menu prompts that may have multiple configurations from which to choose. ANSI/CTA–2037–C specifies disabling accessibility settings intended for vision or hearing-impaired viewers as well as choosing the configuration that does not include the addition of content such as applications (*i.e.,* ''apps'') or TV stations. Other than these exceptions, ANSI/CTA–2037–C specifies that the most power-consumptive configuration must be selected, and the selection must be verified via a test if the most power-consumptive configuration is unknown.

Section 9.7 of ANSI/CTA–2037–C requires all testing to be completed with MDD disabled. Further, Section 9.9 of ANSI/CTA–2037–C provides criteria that are used to determine whether quick start is enabled or disabled during testing. Specifically, quick start is enabled during testing if it is enabled by default or if the wake time of the TV is greater than or equal to 10 seconds when quick start is disabled. In the latter scenario, quick start is enabled to provide the shortest possible resume time. To determine the wake time of the TV for the quick start configuration, ANSI/CTA–2037–C specifies connecting the UUT to LAN without any other

devices connected, playing the SDR IEC test clip, turning off the TV for 20 minutes, and turning it back on such that it is configured to turn on to the HDMI input connection that is playing the IEC test clip. The time between turning on the TV to content being displayed is determined to be the wake time of the TV for the configuration of quick start function.

DOE proposes to adopt through reference these sections of ANSI/CTA–2037–C. DOE has tentatively determined that adopting these sections would address stakeholder comments, would make the DOE test procedure consistent with the industry standard for the configuration of these settings, and would ensure that the DOE test procedure is measuring power consumption in a representative and repeatable manner.

While DOE is proposing to reference these requirements, DOE notes that the most power consumptive configuration of a special function may not be readily identified, as required in Section 9.2 of ANSI/CTA–2037–C, particularly because ANSI/CTA–2037–C specifies on mode testing at three preset picture settings. ANSI/CTA–2037–C does not address which configuration should be selected if a given special function impacts power consumption differently when testing the different preset picture settings or power modes. Additionally, the CTA working group is considering updating this requirement to specify that the most energy consumptive configuration of a special function must be selected if a forced menu is displayed requiring the configuration of special functions.

DOE believes it would be more appropriate to require special functions be configured in a manner that is the most *energy* consumptive, as represented by AEC, (rather than *power* consumptive). Configuring special functions in the most energy consumptive state would mean evaluating the AEC of the TV in a given configuration. This approach would be more repeatable and reproducible because the proposed test procedure includes multiple power consumption tests (on mode in the SDR default, SDR brightest, and HDR10 default preset picture settings, and standby mode), which makes it unclear which test's power consumption should be evaluated for the configuration of special functions. Therefore, DOE is considering updating the requirement to specify that for any special functions that must be configured via a forced menu prompt during initial setup, the most energy consumptive state of the special function, as represented by calculation of AEC, must be selected for testing.

Alternately, if DOE were to consider retaining the configuration of special functions using the most power consumptive state of the special function, DOE would update the requirement to configure special functions in the state that would yield the maximum average power. This is because power consumption is an instantaneous measurement and the point at which power is measured could impact the determination of the most consumptive option.

In addition to considering changing the configuration of special functions from the most power consumptive state to the most energy consumptive state, the CTA working group is also considering changing how the most consumptive state is determined. Currently, ANSI/CTA–2037–C specifies that the selection of the most power consumptive state of a given special function that must be configured via a forced menu prompt must be verified by measuring the power consumption of each possible configuration. For CTA–2037–D, the working group is considering changing this requirement to specify that the option that is more likely to increase energy consumption be selected. That is, rather than verifying the power consumption measurement in each state for each forced menu prompted special function (which could increase test duration and the associated burden exponentially depending on the number of forced menu prompts and the number of options to select for each prompt), the proposal being considered by the CTA working group would require the configuration of special functions from forced menu prompts based on expected behavior of a given special function configuration. The intent of this provision would be to enable any special function that is perceived to provide additional functionality and to disable any special function that is perceived to remove functionality when prompted by a forced menu. As an example, if a UUT has a prompt for enabling or disabling location sharing, this special function is unlikely to use a significant amount of additional energy, but it is more likely that enabling it will result in higher energy consumption than disabling it, and therefore, location sharing should be enabled during testing, according to the language under consideration by the CTA working group.

The CTA working group is also considering other alternate language to eliminate subjective configuration of special functions from forced menu prompts. In particular, the working group is considering specifying that if it is unknown which configuration yields the most energy consumptive state, then the configuration that enables more functionality should be selected, such as location sharing, data reporting, or data backup. However, if a forced menu is displayed requesting the configuration of features that would reduce or save energy, the configuration that consumes maximum energy should be selected; examples include: Smart viewing modes or energy saving functionality. The ultimate goal of such a requirement would be to select the configuration that consumes the most energy, and it is expected that, generally, enabling more functionality would consume more energy. The CTA working group may also consider selecting the option that is highlighted or pre-selected when a given forced menu prompt pops-up on the screen.

In addition to the changes being considered for the configuration of special functions, the CTA working group is considering some other updates to the initial setup requirements. Specifically, the working group is considering specifying that the TV must be tested in the default settings for all functions other than those that require configuration when a forced menu prompt appears on the screen. Further, the working group is considering specifying that the tester must not log into any services if prompted by a forced menu during initial setup, unless it is required for the setup of any other functionality noted in the standard (*e.g.,* smart wake functionality setup via a smart speaker).

The working group also intends to clarify certain requirements for quick start. In particular, to measure the quick start wake time, ANSI/CTA–2037–C specifies that the test must be conducted on LAN, without WAN connection. The working group intends to remove this requirement for CTA–2037–D, so that the quick start wake time check is conducted under the same settings as the rest of the test (*i.e.,* on WAN). Additionally, ANSI/CTA–2037–C specifies that the wake time must be measured when the UUT wakes to the HDMI input. However, it does not state how the wake time should be measured if the UUT does not wake to the HDMI input. For CTA–2037–D, the working group is considering specifying that if the UUT does not wake to displaying video content from the HDMI port, then the wake time measurement period would end as soon as an HDMI input port can be selected to play content. The intent of this requirement is that the wake time is measured up until the

point that a user can make a selection on the TV and this time period would determine whether quick start could stay disabled during the test (*i.e.,* if the wake time is less than 10 seconds) or if it should be enabled.

DOE requests comment on whether it should consider requiring that if a forced menu is displayed requesting the configuration of specific features, then the most energy-consumptive configuration, as represented by AEC, must be selected (rather than the most power consumptive configuration). Additionally, if stakeholders support the use of the most power consumptive configuration, DOE requests comment on whether it should specify that the power consumption measurement is averaged over the duration of the test.

DOE additionally requests comment on any approaches that are under consideration for CTA–2037–D by the CTA working group for the initial setup of the TV, the configuration of forced menu options, or the requirements for the quick start wake time measurement test.

2. Media Player Setup and Connection

Section 9.3 of ANSI/CTA–2037–C specifies requirements for playing video test files using the media player. Specifically, this section specifies that for all UUT setup and test tasks requiring video play, video test files stored on a USB flash drive shall be played from the media player by inserting the USB flash drive into the media player, connecting the media player to the UUT using an HDMI cable, and selecting the HDMI input on the UUT associated with the media player. On the media player, a video setting shall be selected that performs no video processing (*e.g.,* no noise reduction, no upscaling, no adjustment of color, hue, contrast, or brightness).

Sections 5.2 and 5.3 of appendix H require the use of an HDMI input cable and the HDMI input terminal that is designed for viewing live TV or dynamic content from a Blu-ray Disc player or set-top-box. However, appendix H does not provide additional instructions regarding the settings that must be selected for the media player (*e.g.,* noise reduction, upscaling, *etc.*).

Given DOE's proposal to play the media from a USB flash drive rather than a Blu-ray Disc, DOE proposes to incorporate by reference Section 9.3 of ANSI/CTA–2037–C for the media player setup and connection.

3. Test Clips

Appendix H currently specifies use of the IEC 62087:2011 Blu-ray Disc dynamic broadcast-content video signal (*i.e.,* the IEC test clip) for all on mode testing. Section 5.7 of appendix H requires the video aspect ratio of the video signal to fill the entire screen, and section 5.8 of appendix H requires the frame rate and resolution of the video signal to match the highest available format signal capable of the UUT. In the June 2016 RFI, DOE requested comments on several topics related to the IEC test clip, including the representativeness of the test clip and alternate test clips that DOE could consider for testing TVs. 81 FR 41277.

NRDC recommended that DOE continue to use the current IEC test clip in the near-term, but that DOE develop new content in the long term. (NRDC, No. 2 at p. 8) NRDC recommended that in the long term, the test clip should not have excessive frequency of scene cuts or abnormally short scenes. (NRDC, No. 2 at p. 8) NRDC further recommended that in the long-term, DOE create multiple versions of the test clip for verification purposes in order to reduce the potential for circumvention, and that the clips used during such verification testing could be changed periodically and designed to deliver similar results. (NRDC, No. 2 at p. 17) NRDC also suggested that the test clip be formatted in HD, UHD, and UHD + HDR in the long term. (NRDC, No. 2 at p. 8)

NEEA recommended that the test clip be updated to be more representative of popular content such as news, sports, situation comedies, dramas, commercials, YouTube, internet browsing, and scrolling through still photographs. (NEEA, No. 3 at p. 5) NEEA further commented that modern UHD smart TVs can draw 40–100 watts of power when displaying a fully black image or no image at all. NEEA recommended an updated test clip with a portion that is fully or almost entirely black, in order to determine how a TV's power use scales with its illumination. NEEA commented that this would be representative of scenarios when music is played without accompanying video content, an input signal is not applied, or a dark scene is left paused for extended period of time. NEEA also recommended adding to the updated test clip a scene where small amounts of white text move against a fully black background, as in the credit sequences at the end of movies. NEEA asserted that this would be a useful test to determine power scaling capability, stating that most non-emissive display TVs would draw a significant amount of power to display properly, while emissive displays would not. (NEEA, No. 3 at p. 5) NEEA also recommended that the test clip be formatted in native resolutions of 4K, HD, and SD, so that the TV displays the content at its native resolution. (NEEA, No. 3 at p. 5) NEEA recommended that HDR content be included in future test clip development. NEEA noted that HDR content increases power use in TVs, and energy-saving features are often disabled or negated when TVs detect HDR content. NEEA asserted that any test clip without HDR encoding will under-represent real-world TV energy consumption as HDR content becomes more common. (NEEA, No. 3 at p. 7–8)

The CA IOUs recommended including testing clips referenced in the June 2016 RFI (*see* 81 FR 41262, 41263–41264 for a description of the test clips) in the updated test procedure, stating they may be more representative of real-world content than the IEC test clip. The CA IOUs also recommended using multiple test clips and requiring that the power measurement for each clip be within a certain range or tolerance, in order to reduce the ability of a TV to recognize a specific test clip. (CA IOUs, No. 8 at p. 5) The CA IOUs also recommended that the test clip be updated to native UHD- and HDR-enabled content. (CA IOUs, No. 8 at p. 5)

LG commented that viewers watch a variety of content, and that different content presents very different images. LG recommended using a test clip composed of a wide variety of genres in order to reflect the variety of content available to consumers. (LG, No. 4 at p. 2)

ASAP and NEEP recommended that the test clip be updated to include 4K + HDR content. (ASAP and NEEP, No. 6 at p. 1)

CTA recommended that the test clip include material consistent with 4K UHD, HDR, and other new TV features. However, CTA also commented that it would take time and resources to include HDR content in a test clip, especially since the technology is fairly new. CTA recommended allowing HDR technology to mature before including it in a test clip. (CTA, No. 7 at p. 6)

As discussed, EPCA requires that any test procedure prescribed or amended must be reasonably designed to produce test results which measure energy efficiency or energy use during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Since publication of the June 2016 RFI, stakeholders have collaborated during both IEC and CTA working groups to identify an appropriate test clip for TV testing. As a result of these meetings, the SDR IEC test clip continues to be used for testing

the SDR preset picture settings. Additionally, an adapted HDR10 test clip (referred to as the ''HDR10 IEC test clip'' elsewhere in this document), has been initially developed by the Collaborative Labeling and Appliance Standards Program (''CLASP''),[18] for testing HDR10 preset picture settings. Members of the IEC and CTA working groups have agreed to use this HDR10 test clip for testing HDR10 preset picture settings in the respective industry standards. DOE has participated in these industry consensus standards development efforts and provided input on the test clip development efforts as needed.

ANSI/CTA–2037–C specifies use of the SDR IEC test clip for SDR preset picture settings and the HDR10 IEC test clip for HDR10 preset picture settings, while providing similar direction as appendix H for the aspect ratio, resolution, and frame rate of the video signal. Additionally, as mentioned in previous sections, ANSI/CTA–2037–C specifies that the test clips be played via a USB flash drive rather than a Blu-ray Disc. Currently, the IEC test clips are available for download on CTA's website at: *shop.cta.tech/collections/standards/products/determination-of-television-set-power-consumption-ansi-cta-2037-c*. Should IEC make any changes regarding access and availability of these test clips prior to the publication of the final rule, DOE would update the reference in appendix H accordingly.

DOE proposes to reference Sections 7.2 and 9.5 of ANSI/CTA–2037–C for the test clip provisions. Section 7.2 of ANSI/CTA–2037–C specifies the video files that should be used for determination of on mode power consumption and states that the file with the highest resolution supported by the UUT shall be used. Four test clips are specified in ANSI/CTA–2037–C, two of which are used for SDR preset picture settings and two of which are used for HDR10 preset picture settings. Section 9.5 of ANSI/CTA–2037–C additionally specifies that the aspect ratio of the video content must fill the entire screen without being cropped to ensure all TV pixels are activated during testing.

DOE requests comment on its proposal to reference the SDR and HDR10 IEC test clips specified in ANSI/CTA–2037–C for testing TVs in the default, brightest, and HDR10 preset picture settings.

[18] Available at: *shop.cta.tech/collections/standards/products/determination-of-television-set-power-consumption-ansi-cta-2037-c.*

4. Preset Picture Settings for On Mode Tests

Appendix H requires on mode testing only in the default preset picture setting. In the June 2016 RFI, DOE requested comment on whether it should consider measuring on mode power consumption in picture settings other than the default picture settings, and which picture settings DOE should consider. 81 FR 41279. In response, DOE received the following comments.

Samsung commented that using default settings is appropriate and best represents actual use. Samsung also commented that according to an internal study, approximately 60 percent of consumers stay within the default viewing settings through the lifetime of their TVs. (Samsung, No. 5 at p. 2)

LG recommended against testing picture settings other than the default settings. LG stated that testing in other modes could involve choosing between large numbers of possible combinations, which could be unnecessarily burdensome. (LG, No. 4 at pp. 3–4) LG noted that when viewers change picture settings on an LG TV, other settings will change automatically, since certain settings are incompatible for an optimized experience. LG further commented that many such combinations of settings might not be representative of expected use. (LG, No. 4 at pp. 4–6) LG commented that it is not aware of any academic or detailed studies focusing on changes in default modes for TVs but cited several studies that concluded that consumers typically do not deviate from the default settings. (LG, No. 4 at p. 4) LG further emphasized that some consumers prefer viewing a screen that other consumers would consider too bright or too vivid. LG stated that, while it sets the default picture settings to provide the picture that it believes most viewers want most of the time, viewers can also alter the settings to select the picture they prefer. (LG, No. 10 at pp. 1–2) LG asserted that most people do not change the default settings. (LG, No. 10 at pp. 3–4) Regarding testing in two modes as suggested by other commenters (discussed in the following paragraphs), LG asserted that such an approach would not be allowed under EPCA because there is no evidence that the most power consumptive state represents an average use cycle. (LG, No. 10 at p. 4)

CTA commented that most consumers do not change the default picture mode and recommended that TVs be tested in their default mode. (CTA, No. 7 at p. 6)

NRDC commented that energy-saving features on some TVs are automatically disabled, without warning to the user, whenever the default picture settings are changed. (NRDC, No. 2 at p. 1) NRDC suggested requiring two tests: The first test would be performed with default settings, provided that the user is not encouraged to disable the energy-savings features via on-screen messages; the second test would be performed with the TV in its most energy-consumptive state, with energy-saving features disabled. NRDC commented that the measured power from each mode could then be aggregated using a weighted metric. (NRDC, No. 2 at pp. 12–13, 17)

NEEA recommended that a TV's reported energy consumption should combine a weighted aggregate of its measured power in default mode with the measured power in the most energy-consumptive mode. NEEA recommended determining the ''maximum'' power draw by measuring power after identifying the brightest preset picture setting through luminance testing. (NEEA, No. 3 at p. 12) NEEA recommended that power be measured in multiple preset picture modes and averaged in a weighted fashion. (NEEA, No. 3 at p. 11) NEEA further recommended that DOE collect survey data to determine how heavily to weight energy consumption in the default mode versus other modes in which TVs may be operating. (NEEA, No. 3 at p. 11) NEEA also cited research performed by 3M in 2011, which showed that 47 percent of consumers using HDMI or streamed sources intentionally changed the settings on their TVs to make them brighter. NEEA asserted that the result is that at least half of all TVs in the United States could be in more power consumptive modes than the default picture setting. (NEEA, No. 3 at pp. 10–11)

CA IOUs commented that a market research study conducted in July 2011 by CBS Vision found that 46 percent of the respondents changed the picture settings on their newest TV since it was purchased. CA IOUs recommended that the test procedure require that on mode power be measured in preset picture settings other than the default picture setting. CA IOUs further recommended that the test procedure be amended to allow any preset picture setting to be measured using the test procedure. (CA IOUs, No. 8 at pp. 3–4) CA IOUs recommended that the reporting for TVs with ABC enabled by default be modified so that the on mode power measurements recorded for the ABC test are reported along with the on mode power with ABC disabled. CA IOUs also recommended testing each TV in both its default state and its most energy-

consumptive mode. (CA IOUs, No. 8 at pp. 3–5)

ASAP and NEEP recommended that the test procedure be updated to account for any energy-saving features that are automatically disabled whenever the user makes any change to default settings. (ASAP and NEEP, No. 6 at p. 1)

ANSI/CTA–2037–C requires on mode testing using three preset picture settings, based on the functionality of the TV. ANSI/CTA–2037–C requires all TVs to be tested in the default SDR, brightest SDR, and the default HDR10 preset picture settings. These preset picture settings are determined in Sections 9.6 and 9.8 of ANSI/CTA–2037–C. Specifically, Section 9.6 of ANSI/CTA–2037–C requires the tester to play the SDR IEC test clip to identify the SDR default preset picture setting and the HDR10 IEC test clip to identify the HDR10 default preset picture setting. If ABC is enabled by default in these preset picture settings, the on mode test is conducted with ABC enabled. Section 9.8 of ANSI/CTA–2037–C instructs the tester to identify the brightest preset picture setting using the SDR IEC test clip, which is played for 5 minutes while the camera photometer collects the dynamic luminance of the UUT in each preset picture setting. The preset picture setting with the highest dynamic luminance is determined to be the brightest preset picture setting and is used during on mode testing. Section 9.8 of ANSI/CTA–2037–C also includes details such as how to determine the brightest preset picture setting if the dynamic luminance of the considered settings are very similar and specifies certain preset picture settings that are specifically excluded, such as ''PC'' or ''Game.'' Additionally, for CTA–2037–D, the CTA working group is considering explicitly stating that the brightest preset picture setting must be identified with ABC disabled.

DOE has tentatively determined the methodology specified in ANSI/CTA–2037–C addresses many of the concerns expressed in the comments submitted by NRDC, NEEA, the CA IOUs, and ASAP and NEEP; and that this methodology—by capturing a range of preset picture settings that are reflective of different resolutions and brightness settings that consumers may choose among—would produce test results that are more representative of average TV use than the current requirements of appendix H. Therefore, DOE proposes to reference Sections 9.6 and 9.8 of ANSI/CTA–2037–C to identify the preset picture settings that must be selected for testing. DOE additionally proposes to specify that the brightest preset picture setting must be identified with ABC disabled, as is being considered for CTA–2037–D, because the goal of the brightest preset picture setting selection is to test the UUT when it may be operated at its most power consumptive state; this would be achieved when ABC is disabled.

DOE requests comment on its proposal to reference the requirements in ANSI/CTA–2037–C for the selection of the preset picture settings that must be used for testing and additionally specifying that the brightest preset picture setting be identified with ABC disabled.

DOE is aware of certain preset picture settings being introduced on recent TVs that are known to adapt the TV's configuration based on the content, usage pattern, and the environment in which the TV operates. These TVs use artificial intelligence technology to adapt and adjust these settings and such a preset picture setting is sometimes available in addition to Filmmaker mode (defined in section III.C of this document). While DOE is not proposing any requirement around such a preset picture setting, it requests additional information about such preset picture settings and whether DOE should consider excluding such preset picture settings when selecting the default SDR, brightest SDR, and default HDR10 preset picture settings that are required for testing on mode power consumption.

DOE requests information on preset picture settings that can adapt the TV's configuration based on content, usage pattern, environment, *etc.* DOE also requests comment on whether such preset picture settings should be excluded from testing, even if they are one of the default SDR, brightest SDR, or default HDR10 preset picture settings. If stakeholders support excluding such a preset picture setting from testing, DOE requests comment on which preset picture setting(s) should be used for testing instead, particularly if the intelligent preset picture setting is a default SDR or default HDR10 preset picture setting.

5. Sound Level

Section 5.9 of appendix H specifies that the TV sound level shall be configured in accordance with Section 11.4.11 of IEC 62087:2011. Section 11.4.11 of IEC 62087:2011 specifies that the volume control shall be adjusted to a level at which the sound output is audible. DOE understands this instruction to mean starting with the volume control at zero and increasing the volume until an audible level is achieved. Section 9.4 of ANSI/CTA–2037–C specifies that the volume control shall be adjusted to a level greater than zero that is closest to 2 percent of the maximum (*e.g.,* a TV with a maximum level of 30 would have its volume set to 1). As this requirement is more objective than the current requirement specified in IEC 62087:2011, while resulting in comparable sound levels, DOE proposes to reference Section 9.4 of ANSI/CTA–2037–C for the sound level requirements in appendix H.

6. Network Configuration

Section 5.10 of appendix H specifies the network connection configuration to which the UUT must be connected. Section 5.10.2 of appendix H requires the UUT to be connected to a LAN both in on mode and prior to being placed in standby mode, if the TV is network enabled. The LAN shall allow devices to ping other devices on the network, but must not allow access to a WAN. Section 5.10.2 also provides a network connection hierarchy table prioritizing that the UUT be connected via Wi-Fi, then Ethernet if Wi-Fi is not supported by the UUT.

In response to the June 2016 RFI, NRDC and ASAP and NEEP recommended that the standby mode test be performed while the TV is connected to a live internet signal (*i.e.,* WAN) during testing and not just to a local network (*i.e.,* LAN), as is currently required. (NRDC, No. 2 at pp. 16–17; ASAP and NEEP, No. 6 at p. 1) The CA IOUs recommended that network connectivity be enabled in standby and on mode testing. (CA IOUs, No. 8 at p. 5)

Sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C include requirements for network-related equipment and configuration of network connections, and configuration of specified networking devices. Specifically, Section 7.1.8.1 of ANSI/CTA–2037–C specifies that the internet network connection shall support download speeds of at least 25 megabytes per second (''MBps'') and upload speeds of at least 3 Mbps. Sections 7.1.8.2 and 7.1.8.3 specify the use of a smart speaker that shall be used to conduct the wake-by-smart-speaker test and the use of a mobile device that is used for remote control and casting applications. Section 7.1.8.4 specifies that a network traffic generator shall be configured to output multicast discovery packets to the LAN every 1 second. The packets include requests to the UUT typical of everyday use [19] that

[19] For example, the packets include commands sent to the Google and Spotify internet servers.

can be responded to over LAN by the UUT. Section 9.10 requires that for UUTs that are network enabled, both the on mode and standby mode tests be conducted with the UUT connected to an internet-connected (*i.e.,* WAN-connected) LAN network segment that includes no other networking devices besides the devices required to conduct the test (*i.e.,* the smart speaker, mobile device, and network traffic generator). That is, ANSI/CTA–2037–C requires that all on mode and standby mode tests be conducted with the UUT connected to WAN as well as up to three additional devices (*i.e.,* the smart speaker, mobile device, and network traffic generator) connected via the LAN. Section 9.11 of ANSI/CTA–2037–C specifies that for TVs that are advertised to support wake-by-remote-control-app (WbRA), wake-on-cast (WoC), or wake-by-smart-speaker (WbS), enable as many of the supported smart wake features as possible. Any devices used to configure these features (*e.g.,* mobile device, smart speaker, etc.) should be connected to the same LAN as the UUT. Section 9.11 further specifies that the goal is to configure the UUT to wake with as many of the three identified smart wake features as possible. Additionally, the CTA working group is considering explicitly specifying the following additional requirements: (a) The LAN must not include other networking devices besides the devices required to conduct the test; (b) internet connectivity must be confirmed (*e.g.,* by streaming media); (c) if the UUT does not support Wi-Fi or Ethernet connectivity then it shall not be connected to other possible forms of network connection (*e.g.,* MoCA); and, (d) the three smart wake features must be enabled before performing any of the on or standby mode tests.

DOE's analysis of the market indicates that most TVs currently on the market are equipped with the capability to connect to the network. The growing availability of streaming services and video content via digital media suggests that a growing percentage of TVs are connected to an active internet connection when installed in a consumer's home. Additionally, the growth in the market for connected devices, particularly mobile devices and smart speakers, suggests that these devices are also becoming more prevalent in consumer homes. Accordingly, DOE tentatively concludes that the network configuration requirements specified in ANSI/CTA–2037–C—which require an active internet connection for the TV and the configuration of three different types of devices connected to the same local network—are more representative of TVs currently sold on the market than the requirements currently specified in appendix H. Therefore, DOE proposes to reference the network connection requirements specified in Sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C.

DOE requests comment on its proposal to reference Sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C for the network configuration requirements.

DOE also requests comment on the updates being considered by the CTA working group for CTA–2037–D as it pertains to the WAN and LAN connection requirements and the connection requirements for smart wake features.

DOE has found through its testing that configuring the specified network devices, especially the smart speaker, to communicate with the TV was challenging for some TV models. While some TV models provide clear instructions in the user manual for smart speaker setup that allowed for relatively quick and easy configuration, other models did not provide adequate instructions within the user manual, TV menus, or the manufacturer website that would allow the tester to configure the TV to connect to the smart speaker correctly. For two models in particular, DOE had to seek additional sources for instructions—such as technology discussion forums on the internet and third-party websites—that provided more detailed instructions to configure the smart speaker. These third-party instructions typically identified one or more additional steps that were missing in the manufacturer instructions, and that when followed would allow the smart speaker and TV to communicate with each other.[20]

Another challenge that DOE experienced in connecting a smart speaker to the TV was that some TVs were only able to connect to certain smart speaker brands, but not others. For one TV model in particular, DOE was only able to connect the TV to one particular smart speaker brand, despite the TV's user manual explicitly stating that the TV could be connected with multiple different smart brands.

DOE requests feedback on its observed challenges with pairing certain TV models with smart speakers, and whether other laboratories have experienced similar challenges configuring smart speakers or any of the other specified networking devices to connect with a TV model.

DOE also requests comment on whether DOE should consider providing any additional specifications beyond those provided in ANSI/CTA–2037–C, or those being considered for CTA–2037–D, to facilitate establishing the required network connections with additional devices.

G. Test Conduct

Section 7 of appendix H specifies the tests for measuring on mode power consumption, luminance, standby mode power consumption, and off mode power consumption. The following sections describe proposed changes to each of these tests.

1. On Mode Test

As discussed in previous sections, DOE is proposing to adopt the testing requirements specified in ANSI/CTA–2037–C, which specifies a new method to measure dynamic screen luminance at the same time as on mode power consumption. Accordingly, the on mode test specified in ANSI/CTA–2037–C, which DOE proposes to adopt, specifies requirements for camera configuration, UUT stabilization, and measurement of luminance and power consumption.

Section 10 of ANSI/CTA–2037–C specifies the camera configuration and UUT stabilization procedure. First, the camera photometer must be configured to ensure that the UUT's screen border fits in the camera's field of view. Additionally, the color correction factors must be identified, if necessary, per the camera manufacturer's instructions. The UUT is then stabilized by playing the first 5 minutes of the IEC SDR test clip multiple times until the average power level between successive runs of the clip is within 2 percent. The procedure specifies that final camera configuration is performed just before on mode testing so that the UUT remains stabilized during the transition from this step to on mode testing. DOE proposes to reference Section 10 of ANSI/CTA–2037–C in appendix H to specify the UUT and camera photometer stabilization requirements.

Section 11.1 of ANSI/CTA–2037–C specifies the on mode test conduct, which as discussed, specifies measuring power consumption and dynamic luminance simultaneously. ANSI/CTA–2037–C specifies conducting on mode testing in the SDR default, SDR brightest, and HDR10 default preset picture settings. All UUTs are tested with ABC off at the default backlight in each preset picture setting. Any preset picture setting with ABC off by default is additionally tested with the backlight

[20] For example, on one unit, the third-party information identified the need to access a specific setting several layers ''deep'' within the TV settings menu in order to activate the smart speaker functionality. This information was not specified in the manufacturer-provided instructions.

level set to 20 percent of its maximum backlight level. Any preset picture setting with ABC on by default is additionally tested at 140 lux, 50 lux, 17 lux, and 4 lux room illuminance levels. These room illuminance levels are not identical, but are in practice equivalent, to the room illuminance levels specified in the current appendix H (*i.e.,* 100 lux, 35 lux, 12, lux, and 3 lux) for the following reason. Appendix H requires the lamp to be placed directly in front of the ABC sensor to set room illuminance levels at 100 lux, 35 lux, 12 lux, and 3 lux. Given that ANSI/CTA–2037–C specifies the lamp to be placed at an angle of 45° from the ABC sensor, the room illuminance levels are slightly higher to ensure that the light at the ABC sensor is equivalent to the current room illuminance values.

DOE proposes to reference these requirements for the on mode power and luminance measurements in the default SDR, brightest SDR, and default HDR10 preset picture settings. However, for the brightest SDR preset picture setting, DOE proposes to only utilize the on mode power consumption with ABC disabled for the calculation of AEC, regardless of the default ABC setting. This is because the selection of the brightest preset picture setting is done with ABC disabled (as discussed in section III.F.4 of this document). If ABC were then enabled during the on mode measurement test, it would be inconsistent with how the preset picture setting was selected and may not truly capture the intended brightest preset picture setting's luminance and power.

DOE requests comment on its proposal to reference Section 10 of ANSI/CTA–2037–C for the camera photometer and stabilization requirements.

DOE also requests comment on its proposal to reference Section 11.1 of ANSI/CTA–2037–C, for the on mode dynamic luminance and power measurement. Specifically, DOE requests comment on using the brightest preset picture setting measurement with ABC turned off for the AEC calculation, regardless of its default setting.

2. Luminance Test

Section 7.2 of appendix H specifies the procedures for measuring the luminance of the UUT by playing the static IEC 3-bar, black-and-white image and measuring the instantaneous luminance. As discussed, ANSI/CTA–2037–C specifies measuring the dynamic luminance concurrently with on mode power consumption in each preset picture setting utilizing a camera photometer, which provides more representative results compared to a single instantaneous luminance. As such, DOE is proposing to reference ANSI/CTA–2037–C for the on mode power consumption and dynamic luminance measurement, as discussed in section III.G.1 of this document. Therefore, DOE proposes to remove the separate luminance test currently specified in section 7.2 of appendix H.

3. Standby Mode Test

Section 7.3 of appendix H specifies the procedures for measuring the power consumption of TVs in standby mode, which encompasses standby-passive mode and standby-active, low mode.

For conducting these tests, appendix H specifies using the methodology prescribed in Section 5.3.1 of IEC 62301 Ed. 2.0, which states that standby mode power consumption shall be determined using one of three methods—sampling method, average reading method, or direct meter reading method. Specifically, IEC 62301 Ed. 2.0 specifies that the UUT must be energized for not less than 15 minutes; data recorded in the second two-thirds of the total test duration is used to determine stability. For input powers less than or equal to 1 watt, stability is established when a linear regression through all power readings for the second two thirds of the data has a slope of less than 10 milli-watts per hour (''mW/h'') for input powers of more than 1 watt, stability is established when a linear regression through all power readings for the second two thirds of the data has a slope of less than 1 percent of the measured input power per hour. The test duration is extended up to a maximum of 3 hours until the stability criteria are met. If stability cannot be achieved within 3 hours, IEC 62301 Ed. 2.0 specifies assessing the raw data for periodic or cyclic patterns to meet different criteria specific to cyclic or irregular power consumption patterns. IEC 62301 Ed. 2.0 also specifies additional requirements for different scenarios, such as modes with cycle, non-cyclic, unstable, or irregular power consumption.

In response to the June 2016 RFI, NRDC and ASAP and NEEP recommended that the standby mode test be performed while the TV is connected to a live internet signal during testing and not just to LAN, as is currently required. NRDC and ASAP and NEEP also recommended that the standby test duration be extended. (NRDC, No. 2 at pp. 16–17; ASAP and NEEP, No. 6 at p. 1) CA IOUs recommended that network connectivity be enabled in standby and on mode testing. (CA IOUs, No. 8 at p. 5)

Section 11.2 of ANSI/CTA–2037–C specifies the procedures for performing the standby mode test. As part of the overall setup and configuration requirements, the UUT is connected to WAN, and up to three devices (*i.e.,* smart speaker, mobile device, and network traffic generator) are connected to the same LAN, as discussed previously in section III.F.6 of this document. Section 11.2 of ANSI/CTA–2037–C specifies that the standby-active and standby-passive measurements shall be conducted by powering down the UUT from the SDR default preset picture setting configuration. After the UUT is powered down, power consumption is measured at intervals of 1 second or shorter, and the test concludes when the cumulative average of all data points taken in the last third of the measurement period falls within ±1 percent or ±10 milliwatts (''mW'') of the average of the last two thirds of the total measurement period. The total measurement period cannot be less than 60 minutes nor greater than 240 minutes. The standby power measurement is the average power reading during the last two thirds of the total measurement period. If a UUT does not meet the stability criteria at the end of 240 minutes, ANSI/CTA–2037–C specifies reviewing the power trace for any signs of unusual behavior, such as an automatic update, and requires repeating the test if atypical behavior was observed. Depending on the network capabilities of the UUT, the measurement performed during the standby test is recorded as either a standby-active mode [21] measurement or a standby-passive mode [22] measurement.

Accompanying the standby mode test, Section 9.11 of ANSI/CTA–2037–C additionally requires a series of ''wake'' commands to be sent from the specified networking devices to the TV to verify that the TV is properly connected to the LAN and properly configured to communicate with other devices on the network. As discussed in section III.F.6 of this document, Section 9.11 of ANSI/CTA–2037–C specifies how to wake the TV using three possible wake

[21] Section 5.1 of ANSI/CTA–2037–C defines standby-active mode as a partial on mode power mode in which the UUT is connected to an external power source and does not provide picture or sound. The UUT can be switched into another power mode with the remote control unit, an internal signal, or an external signal.

[22] Section 5.1 of ANSI/CTA–2037–C defines standby-passive mode as a partial on mode power mode in which the UUT is connected to an external power source and does not provide picture or sound. The UUT can be switched into another power mode with the remote control unit or an internal signal, but not with an external signal.

commands: Wake-by-remote-control-app (WbRA), wake-on-cast (WoC), or wake-by-smart-speaker (WbS). To start the test, the UUT is first powered down for 5 seconds and then powered on via one of the three wake commands according to the following hierarchy: WbS if available, otherwise WoC, otherwise WbRA (hereafter referred to as the ''5-second check test''). The standby test is then performed, as described in the previous paragraph. Subsequently, at the end of the standby mode test, the TV must be woken using the same hierarchy as was used during the initial 5-second check test.

For CTA–2037–D, the CTA working group is considering certain revisions to the test method for measuring power consumption in standby mode. The following paragraph enumerates the revisions under consideration for the standby mode test.

First, the working group is considering removing the requirement that the UUT must be woken using the smart wake devices at the end of the standby mode test. Instead, the 5-second check test is performed only once when the UUT is first powered down for 5 seconds. If any or all of the configured smart wake features fail the 5-second check test, then they must remain configured for the duration of the test. Additionally, the working group is considering three different parameters to record the standby mode power consumption, depending on the level of functionality provided by the UUT in standby mode. For UUTs with at least one smart wake feature enabled, the power consumption is recorded as 'partial on mode power with smart wake enabled'. For UUTs with no advertised or enabled smart wake features, the power consumption is recorded as 'partial on mode power with internet connection' and for non-internet connected UUTs, the power consumption is recorded as 'partial on mode power without internet connection'. Finally, the working group is considering removing the wake time test provisions since this measurement is not repeatable because it is dependent on how the TV is woken.

The working group contended that the requirement to wake the UUT using the smart wake functionality at the end of the standby mode test would not be repeatable because some TVs can be woken only at certain times when in standby mode. For such TVs, the standby mode power consumption cycles between a high power state (*e.g.,* 15 watts) and a low power state (*e.g.,* 1–2 watts). Depending on when the wake command is issued to the TV, the smart wake feature may successfully wake the UUT (*e.g.,* if the command is sent when the TV is in the high power state) or it may not wake the UUT (*e.g.,* if the command is sent when the TV is in the low power state). This could impact the repeatability of the test. However, DOE is concerned that if a TV cannot be consistently woken at the end of standby mode, the measurement would not be representative of real-world use.

Additionally, during round robin testing, DOE observed challenges in powering on certain TV models using the network connected devices. For one model specifically, the 5-second check test conducted before the start of standby testing yielded inconsistent results—sometimes requiring multiple wake commands to turn on the unit with the smart speaker or mobile device. DOE repeated the standby test at least four times and made the following observations. First, the UUT could be woken using smart wake functions only one time. It is likely that this wake command aligned with when the TV was in a high-power state while others were in a low-power state. Second, the average power consumption of the four tests, measured over a 40 minute test duration was 3.5 watts, 6.9 watts, 10.3 watts, and 11 watts. This shows significant variation between the results, even though the UUT was configured to wake with smart wake features each time. It is possible that the average power over a longer duration, as is specified in ANSI/CTA–2037–C, would lead to more repeatable results.

Overall, DOE notes that in some instances neither the standby mode measurement nor the wake test were repeatable. Lacking additional data, DOE proposes to reference the requirement specified in ANSI/CTA–2037–C, which specifies that the wake test must be performed at the end of the standby mode measurement.

DOE requests stakeholders to provide any additional data and information regarding the repeatability of the standby mode test when connected to smart wake functions, the ability to consistently wake the UUT using smart wake functionality, and the representativeness of the standby mode test, if a wake test is not included at the end of the standby mode duration.

Accordingly, DOE proposes to reference Section 9.11 of ANSI/CTA–2037–C for the instructions to wake the UUT from standby mode using network connected devices, and Section 11.2 of ANSI/CTA–2037–C to conduct the standby mode test. Specifically, DOE proposes that at the end of the standby mode test, the UUT must be woken using the smart wake features (as is specified in Section 9.11 of ANSI/CTA–2037–C) in the following order of preference: Wake-by-smart-speaker, wake-on-cast, and wake-by-remote-control-app. If the UUT can be powered on using any one of these methods, its standby mode power should be recorded as 'standby power with smart wake enabled'. However, if the UUT cannot be powered on using any of the three specified methods either during the 5-second check test or at the end of the standby mode test, the measured standby mode power consumption would be recorded as 'standby power with internet connection and without smart wake enabled'.

Similarly, DOE proposes that if the UUT was powered on during the 5-second check test but is unable to be powered on via any of the network connected devices at the end of the standby mode test, the measured power consumption would be recorded as 'standby power with internet connection and without smart wake enabled'. Additionally, TVs that do not have network capability would be required to record the measured standby power consumption as standby-passive mode measurement.

DOE requests comment on its proposal to reference Section 11.2 of ANSI/CTA–2037–C to measure the power consumption in standby mode with some additional specifications. DOE also requests comment on its proposal to reference Section 9.11 of ANSI/CTA–2037–C for conducting the wake tests at the completion of standby mode.

DOE requests comment on the revisions that are under consideration for the standby mode test by the CTA working group.

DOE requests comment on whether it is appropriate to differentiate the standby mode power consumption of TVs that can be powered on using any of the three specified methods versus those that cannot be powered on using the smart wake features. DOE also requests comment on whether there would be any benefit to differentiating between the power consumption of such TVs. DOE requests comment on whether the parameters 'standby smart wake' and 'standby internet' are appropriate or if it should consider other parameters, such as 'standby-active, high' and 'standby-active, low', respectively.

Additionally, as described, Section 11.2 of ANSI/CTA–2037–C specifies that if a UUT does not meet the stability criteria at the end of the 240 minute measurement period, the tester should review the logged data for any signs of unusual behavior, like that associated with the TV performing an automatic update, and redo the test if atypical

behavior was observed. DOE notes that Section 11.2 of ANSI/CTA–2037–C does not provide instruction for how to proceed if review of the logged data does not show any signs of unusual behavior.

During its testing of TVs, DOE has observed that some TVs do not meet the stability criteria after 240 minutes despite not exhibiting any unusual behavior. Furthermore, some models did not achieve stability as defined by ANSI/CTA–2037–C even after significantly extended test durations (*e.g.,* 24 hours, 48 hours, 76 hours, etc.). Observation of the logged power data on such TVs indicates that the TVs fluctuate between a low power consumption range and a high power consumption range, but that this fluctuation is not cyclic or periodic (*i.e.,* it does not have an observable pattern). It is likely that such TVs are performing background activity at irregular intervals during standby mode, which results in fluctuations in the average power consumption that exceed the narrow bounds of the stability criteria.

To accommodate TVs that do not achieve stability after the end of the specified 240 minute measurement period, DOE proposes that the stability requirement is waived if the full 240 minutes conclude without meeting the stability criteria. In such cases, the average power during the last two-thirds of the measurement period would be recorded as the standby-active mode measurement.

Finally, DOE notes that Section 11.2 of ANSI/CTA–2037–C includes instruction to measure the wake time when performing the wake procedure following completion of the standby mode test. The CTA working group is evaluating whether the wake time test should be eliminated from CTA–2037–D. DOE proposes to exclude the measurement of wake time from the DOE test procedure, because DOE tentatively concludes that ''wake time'' is a performance related feature that does not impact the energy consumption of the UUT.

For TVs that do not meet the stability criteria of the standby mode measurement, DOE requests comment on measuring power consumption for 240 minutes and using the average power consumption over the last two-thirds of the measurement period as the standby-active mode measurement.

4. Off Mode Test

Section 7.4 of appendix H references IEC 62301 Ed. 2.0 for measuring the off mode power consumption of TVs. ANSI/CTA–2037–C specifies the same methodology to measure off mode power consumption as that specified for standby mode (discussed in section III.G.3 of this document). However, for CTA–2037–D, the CTA working group is considering removing an off mode test.

DOE is not proposing a test to measure TV power consumption in off mode and instead proposes to remove the existing off mode test specified in appendix H because TVs generally do not have an off mode that is distinct from standby mode. Even when a TV is powered off using a remote, it typically has some functionality operational to be able to receive a signal from the remote control or other device to turn back on, which meets the definition of standby mode rather than off mode.

DOE requests comment on its proposal to remove the off mode test from appendix H.

H. Calculation of Annual Energy Consumption

Section 8 of appendix H specifies the calculation and rounding requirements for AEC using the on and standby mode power consumption measurements. ANSI/CTA–2037–C does not contain an equivalent section for the calculation of AEC. Therefore, DOE proposes to retain the current AEC calculation requirements in appendix H but proposes certain modifications consistent with the proposed amendments to the on, standby, and off mode tests.

To calculate AEC, DOE first proposes that the average on mode power consumption be calculated as the average of the on mode power in the three preset picture settings: SDR default, SDR brightest, and HDR10 default. If ABC is enabled for the SDR or HDR10 default preset picture settings, the power consumption at each of the four room illuminance levels would be used to determine the average power consumption of the preset picture setting. The proposed equations below detail the calculation of on mode power consumption and AEC. The proposed calculation of AEC is different from the current calculation in appendix H primarily in the value used for P_{On}. Given that appendix H specifies testing only the default preset picture setting in on mode, P_{On} reflects the average power consumption in that default preset picture setting. However, in this document, DOE proposes testing three preset picture settings for on mode power consumption; therefore, P_{On} would be the average of the power consumption in the tested preset picture settings.

$$P_{on} = (P_{Default} + P_{Brightest} + P_{HDR10})/3$$

Where:

$P_{Default}$ = the measured average power consumption in the default SDR preset picture setting, if ABC is disabled

OR

$$P_{Default} = (P_{Default_140} + P_{Default_50} + P_{Default_17} + P_{Default_4})/4$$

if ABC is enabled by default in the default SDR preset picture setting and, $P_{Default_140}$, $P_{Default_50}$, $P_{Default_17}$, and $P_{Default_4}$ are the average power consumption values at room illuminance levels of 140, 50, 17, and 4 lux, respectively

$P_{Brightest}$ = the measured average power consumption in the brightest SDR preset picture setting

P_{HDR10} = the measured average power consumption in the default HDR10 preset picture setting, if ABC is disabled

OR

$$P_{HDR10} = (P_{HDR10_140} + P_{HDR10_50} + P_{HDR10_17} + P_{HDR10_4})/4$$

if ABC is enabled by default in the default HDR10 preset picture setting and, P_{HDR10_140}, P_{HDR10_50}, P_{HDR10_17}, and P_{HDR10_4} are the average power consumption values at room illuminance levels of 140, 50, 17, and 4 lux, respectively

For standby mode, DOE proposes to retain the same hours per day spent in standby mode, but instead of standby-active and standby-passive, as currently specified in appendix H, DOE proposes to use standby power with smart wake, standby power with internet connection, and standby-passive, as specified in section III.G.3 of this document.

Additionally, DOE proposes to retain the AEC equation currently specified in appendix H but to remove the off mode variable. Given the current AEC equation assigns 0 hours to off mode, DOE proposes to retain the same weighting factors for on and standby modes.

The proposed AEC equation is presented below:

$$AEC = 365 * (P_{on} * H_{on} + P_{standby_smart_wake} * H_{standby_smart_wake} + P_{standby_internet} * H_{standby_internet} + P_{standby_passive} * H_{standby_passive})/1000$$

Where:

P_m = power measured in a given mode m (in Watts)

H_m = hours per day spent in mode m

365 = conversion factor from daily to yearly

1000 = conversion factor from watts to kilowatts

And values for H_m are as specified in Table III.2.

TABLE III.2—HOURLY WEIGHTINGS

	H_{on}	$H_{standby_smart_wake}$	$H_{standby_internet}$	$H_{standby_passive}$
Standby smart wake	5	19	0	0
Standby internet	5	0	19	0
Standby-passive	5	0	0	19

DOE requests comment on its proposed calculations for the average on mode power consumption and AEC.

I. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for TVs by proposing to reference ANSI/CTA–2037–C to measure on mode dynamic screen luminance and power consumption as well as standby mode power consumption. ANSI/CTA–2037–C has several differences in testing TVs compared to the current test method at appendix H. Key differences include testing three preset picture settings as opposed to a single default picture setting; measuring dynamic screen luminance over the entire duration of the test clip using a camera photometer at the same time as on mode power consumption measurement; using an LED lamp setup at an angle of 45° for testing TVs with ABC enabled by default; and, testing on and standby mode with an active internet connection (*i.e.,* WAN) and additionally connecting the TV to three other devices on LAN to wake the TV from standby mode to on mode. DOE has tentatively determined that these proposed amendments would impact testing costs as discussed in the following paragraphs.

Given the new equipment, setup, and testing requirements specified in ANSI/CTA–2037–C, which DOE is proposing to reference, DOE estimates that TV testing would have a one-time equipment investment cost, a one-time re-testing cost, and additional annual testing costs for the TVs covered by this NOPR.

To determine the potential costs manufacturers would incur due to the proposed test procedure amendments, DOE used data from DOE's publicly available Compliance Certification Database (''CCD'') to estimate the number of unique basic models that are currently covered by the existing DOE test procedures. Based on data from DOE's CCD, DOE estimated there are approximately 3,346 unique basic models currently on the market. DOE also estimated the amount of time it would take manufacturers to test a single TV unit to the proposed test procedure amendments, as well as the amount of time it currently takes manufacturers to test a single TV unit to the existing DOE test procedures. Table III.3 presents the estimated amount of time a technician would need to spend to test a single TV unit under the existing DOE test procedures and under the proposed test procedure amendments.

TABLE III.3—ESTIMATED AMOUNT OF TIME TO TEST TVS UNDER THE EXISTING DOE TEST PROCEDURES AND THE PROPOSED DOE TEST PROCEDURES

Testing steps	Units	Existing DOE TP duration (Min–Max)	Existing DOE TP duration (Average)	Proposed DOE TP duration (Min–Max)	Proposed DOE TP duration (Average)
System Software Updates	*minutes*	.....	.....	15	15
Stabilization	*minutes*	60	60	15–20	18
On mode	*minutes*	10–40	25	55–110	83
Luminance (Brightest PPS Determination)	*minutes*	33	33	30–45	38
Standby mode	*minutes*	30	30	20–30	25
Setup (before and between tests)	*minutes*	25	25	65–100	83
Total Test Duration	*hours*	2.6–3.1	2.88	3.3–5.3	4.37

Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for an electronics technician is $32.84.[23] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percent that wages comprise the total compensation for an employee. DOE estimated that wages make up 70.6 percent of the total compensation for private industry employees.[24] Therefore, DOE estimated that the total hourly compensation (including all fringe benefits) of a technician performing the testing is $46.52.[25] Using these labor rates and time estimates, DOE estimated that it would cost TV manufacturers on average approximately $203.29 to conduct a single test on a TV unit in accordance with the proposed test procedure amendments.[26] DOE estimated that this is on average approximately $69.31 more than TV manufacturers are incurring to conduct a single test on a TV in accordance with the existing DOE test procedures.[27]

TV manufacturers are required to test at least two units per basic model. Therefore, DOE estimates that it would cost manufacturers approximately $406.58 per basic model in accordance with the proposed test procedure

[23] DOE used the mean hourly wage of the ''17–3023 Electrical and Electronic Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2020) to estimate the hourly wage rate of a technician assumed to perform this testing. *See www.bls.gov/oes/current/oes173023.htm.* Last accessed on November 8, 2021.

[24] DOE used the June 2021 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.6 percent of the total employee compensation. *See www.bls.gov/news.release/archives/ecec_09162021.pdf.* Last accessed on November 8, 2021.

[25] $32.84 ÷ 0.706 = $46.52.

[26] 4.37 hours × $46.52 = $203.29.

[27] $203.29 − (2.88 hours × $46.52) = $69.31.

amendments, if finalized, which is on average approximately $138.62 more per basic model than TV manufacturers are currently incurring to test a TV basic model. DOE estimated that on average TV models remain on the market for approximately 2 years, before being replaced by newer models. DOE estimates that approximately 75 percent of the models that are currently on the market will remain on the market between the time DOE finalizes a test procedure and when manufacturers are required to use the updated DOE test procedures.[28] Therefore, DOE estimated that approximately 2,510 TV basic models will need to be re-tested in accordance with the proposed DOE test procedure amendments, if finalized.[29] Based on the testing cost estimates previously stated, DOE estimated that manufacturers would incur a one-time re-testing cost of approximately $1,021,000 to re-test all TV basic models remaining on the market, if the proposed test procedure amendments are finalized.[30]

In addition to these testing costs, DOE assumed that manufacturers would need to purchase camera photometers to conduct the proposed test procedure amendments, if finalized. DOE estimated that a camera photometer costs approximately $10,000. DOE also estimated that manufacturers would purchase a camera photometer for every 50 TV basic models manufactured, on average. This results in manufacturers purchasing approximately 67 camera photometers, due to the proposed test procedure amendments. DOE estimated manufacturers would incur a one-time cost of approximately $670,000 to purchase the equipment necessary to conduct the proposed test procedure amendments, if finalized.

Lastly, DOE estimated the additional incremental testing costs of the proposed test procedure amendments, if finalized, compared to the existing DOE test procedures. As previously stated, DOE assumed that each TV basic model would cost approximately $138.62 more to test to the proposed test procedure amendments, if finalized, than to the existing DOE test procedures. Additionally, as previously stated, DOE estimated there are approximately 3,346 unique TV basic models currently on the market and half of these models are estimated to be replaced or redesigned each year.[31] Therefore, DOE estimated that approximately 1,673 TV basic models would be introduced into the market each year, which will require testing in accordance with the proposed test procedure amendments, if finalized. DOE estimated that TV manufacturers would incur an additional testing cost of approximately $232,000 each year due to the additional incremental testing costs of the proposed test procedure amendments, if finalized, over the existing DOE test procedures.[32]

DOE requests comment on any aspect of the estimated one-time testing costs, annually additional incremental testing costs, or the estimated equipment costs associated with these proposed test procedure amendments; including the number of TV basic models, the amount of time needed to conduct the proposed test procedure amendments, the amount of time needed to conduct the existing DOE test procedures, or the costs associated with the equipment necessary to conduct the proposed test procedure amendments.

2. Harmonization With Industry Standards

DOE will 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 or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures DOE might propose to incorporate by reference the industry standard with certain modifications.

For the TV test procedures at 10 CFR part 430, appendix H, DOE proposes to incorporate by reference ANSI/CTA–2037–C which provides the definitions, test equipment and setup, test conditions, test configuration, and test conduct for measuring TV screen luminance, on mode power consumption, and standby mode power consumption. The industry standard and test clips DOE proposes to incorporate by reference via amendments described in this document are discussed in further detail in section IV.M.

DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for TVs.

DOE notes that it is proposing certain modifications to the industry standard it proposes to reference, as follows:

(1) Section 9 of ANSI/CTA–2037–C specifies that the ABC lamp, camera photometer, and the TV unit under test must all powered from the same specified power supply. DOE proposes that only the TV unit under test must be powered from the specified power supply and the camera photometer and ABC lamp may be powered using standard mains electricity. It is recommended that a unit under test be the only equipment connected to a conditioned power source to prevent any interference in the measured power consumption values from any other equipment connected on the same source. Further, DOE's assessment has shown that powering the ABC lamp and camera photometer directly from the mains electricity does not impact the measured power consumption values.

(2) Section 11.2 of ANSI/CTA–2037–C specifies the test to measure standby mode power consumption and wake time. DOE is not proposing to include the measurement of wake time. Additionally, DOE is proposing to include additional criteria for recording the standby mode power consumption as standby active mode or standby passive mode depending on the ability of the UUT to maintain network connectivity in standby mode.

J. 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 that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the

[28] Given the estimated 2-year TV model turn-over rate, 25 percent would be expected to be replaced, redesigned, or removed from the market over a 180-day period. See section III.J for a discussion of the compliance date.

[29] The other 25 percent of models would be replaced with new models between the time DOE finalized a TV test procedure and when manufacturers are required to use the finalized DOE test procedure. These new models would be able to use the updated DOE test procedures. The additional incremental testing costs of the proposed test procedure amendments are addressed later on in this section.

[30] 2,510 models × $406.58 = $1,020,516 (rounded to $1,021,000).

[31] Given the estimated 2-year TV model turn-over rate, 50 percent would be expected to be replaced, redesigned, or removed from the market over a 1-year period.

[32] 1,673 models × $138.62 = $231,911 (rounded to $232,000).

manufacturer will experience undue hardship. (*Id.*)

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 ''significant regulatory actions'' 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 (August 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.*

For manufacturers of TVs, 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 size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing TVs is classified under NAICS 334220, ''radio and television broadcasting and wireless communications equipment manufacturing.'' 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 has recently conducted a focused inquiry into small business manufacturers of the products covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [33] to create a list of companies that import or otherwise manufacture the products covered by this proposal. DOE identified 33 unique companies that manufacture TVs sold in the U.S. All of these companies have more than 1,250 employees or are fully owned and operated outside the United States.

Therefore, DOE initially concludes that the impacts of the proposed test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products 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 certain covered consumer products and commercial equipment. (*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.

There is currently no energy conservation standard for TVs. As such, if finalized, the test procedure proposed would not establish a reporting requirement. In the event DOE proposes an energy conservation standard for TVs with which manufacturers must demonstrate compliance, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

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 may be used to develop and implement future energy conservation standards for TVs. 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 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,

[33] U.S. Department of Energy Compliance Certification Management System, available at: *www.regulations.doe.gov/ccms.*

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. 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 *www.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 *https://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 TVs 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 TVs would incorporate testing methods contained in certain sections of the following commercial standard: ANSI/CTA–2037–C. DOE has evaluated this standard and is unable to conclude whether it fully complies 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 test standard published by CTA, titled ''Determination of Television Set Power Consumption,'' ANSI/CTA–2037–C.

ANSI/CTA–2037–C is a voluntary industry test procedure that measures on mode TV power consumption in three preset picture settings and standby mode power consumption. The test procedure amendments proposed in this NOPR generally reference ANSI/CTA–2037–C including provisions to address definitions, test equipment and setup, test conditions, test configuration, and test conduct for measuring TV screen luminance, on mode power consumption, and standby mode power consumption. Additionally, the test clips required to measure on mode power consumption are available digitally on CTA's website. These test clips are available in two formats: SDR and HDR10 and for each format, the test clips are available in two resolutions: SD and HD for the SDR test clip and HD and UHD for the HDR10 test clip.

Copies of ANSI/CTA–2037–C and the test clips may be downloaded from the CTA's website at *https://shop.cta.tech/products/determination-of-television-set-power-consumption-ansi-cta-2037-c.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar 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: *www.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=61.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Submission of Comments

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.[34] 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

[34] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

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).

C. 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 requests comment on its proposal to adopt the substantive provisions of ANSI/CTA–2037–C in appendix H with certain modifications.

(2) DOE requests comment on defining the identified terms in appendix H through reference to ANSI/CTA–2037–C.

(3) DOE also requests comment on whether it should consider the revisions to the power mode definitions that are under consideration by the CTA working group for CTA–2037–D.

(4) DOE requests comment on referencing Section 7.1.1 of ANSI/CTA–2037–C for the power supply requirements. DOE also requests comment on referencing the updated requirements that are under consideration for CTA–2037–D, which would move the voltage and frequency requirements for the power supply from the standby mode to on mode section within Section 7.1.1 of the CTA–2037 standard.

(5) DOE requests comment on its proposal to connect only the UUT to the specified AC power source during testing and to specify that the camera photometer and ABC lamp may be powered via mains power. DOE also requests feedback on whether the camera photometer and ABC lamp should be connected to additional specified AC power sources and the burden versus benefit of such an approach.

(6) DOE requests comment on its proposal to reference the power meter requirements from ANSI/CTA–2037–C. Specifically, DOE requests feedback on the potential burden, if any, to meet the more stringent requirements specified in ANSI/CTA–2037–C.

(7) DOE requests comment on its proposal to measure dynamic screen luminance and to specify use of a camera photometer to measure dynamic screen luminance. In particular, DOE requests comment on any concerns with the burden associated with using a camera photometer as specified by ANSI/CTA–2037–C to measure screen luminance.

(8) DOE also requests comment on the additional calibration requirement under consideration for CTA–2037–D and whether DOE should include this requirement for its TVs test procedure.

(9) DOE requests comment on its proposal to reference the illuminance meter requirements, including the calibration requirements, from ANSI/CTA–2037–C.

(10) DOE also requests comment on the updated illuminance meter requirements under consideration for CTA–2037–D, whether DOE should consider referencing the updated requirements when finalized, and the reason(s) for doing so.

(11) DOE requests comment on its proposal to reference the media player and USB flash drive requirements from ANSI/CTA–2037–C. DOE also requests comment on whether DOE should maintain the current requirement that the media player and UUT must not be from the same manufacturer.

(12) DOE requests comment on its proposal to reference Section 7.1.9 of ANSI/CTA–2037–C for the light source required for conducting tests with ABC enabled.

(13) DOE requests comment on whether the specified ambient temperature and humidity requirements are adequate or whether the temperature and relative humidity specifications should include additional specification regarding the precision and/or accuracy of the instruments used to verify that the required ambient conditions are maintained.

(14) DOE requests comment on its proposal to reference Section 7.4 of ANSI/CTA–2037–C for the room illuminance level and requirement to position the illuminance meter in the same manner as it would be positioned during luminance and power measurement tests.

(15) DOE requests comment on its proposal to reference all the requirements specified in Section 8 of ANSI/CTA–2037–C for the test room setup. These include the setup of the UUT, illuminance meter, camera photometer, table surface, and reflective card.

(16) DOE also requests comment on whether it is appropriate to specify that the table surface must be covered with black, non-reflective cloth or whether DOE should specify a ''minimally reflective'' cloth instead.

(17) DOE requests comment on whether it should consider requiring that if a forced menu is displayed requesting the configuration of specific features, then the most energy-consumptive configuration, as represented by AEC, must be selected (rather than the most power consumptive configuration). Additionally, if stakeholders support the use of the most power consumptive configuration, DOE requests comment on whether it should specify that the power consumption measurement is averaged over the duration of the test.

(18) DOE additionally requests comment on any approaches that are under consideration for CTA–2037–D by the CTA working group for the initial setup of the TV, the configuration of forced menu options, or the requirements for the quick start wake time measurement test.

(19) DOE requests comment on its proposal to reference the SDR and HDR10 IEC test clips specified in ANSI/CTA–2037–C for testing TVs in the default, brightest, and HDR10 preset picture settings.

(20) DOE requests comment on its proposal to reference the requirements in ANSI/CTA–2037–C for the selection of the preset picture settings that must be used for testing and additionally specifying that the brightest preset picture setting be identified with ABC disabled.

(21) DOE requests information on preset picture settings that can adapt the TV's configuration based on content, usage pattern, environment, etc. DOE also requests comment on whether such preset picture settings should be excluded from testing, even if they are one of the default SDR, brightest SDR, or default HDR10 preset picture settings. If stakeholders support excluding such a preset picture setting from testing, DOE requests comment on which preset

picture setting(s) should be used for testing instead, particularly if the intelligent preset picture setting is a default SDR or default HDR10 preset picture setting.

(22) DOE requests comment on its proposal to reference Sections 7.1.8, 9.10, and 9.11 of ANSI/CTA–2037–C for the network configuration requirements.

(23) DOE also requests comment on the updates being considered by the CTA working group for CTA–2037–D as it pertains to the WAN and LAN connection requirements and the connection requirements for smart wake features.

(24) DOE requests feedback on its observed challenges with pairing certain TV models with smart speakers, and whether other laboratories have experienced similar challenges configuring smart speakers or any of the other specified networking devices to connect with a TV model.

(25) DOE also requests comment on whether DOE should consider providing any additional specifications beyond those provided in ANSI/CTA–2037–C, or those being considered for CTA–2037–D, to facilitate establishing the required network connections with additional devices.

(26) DOE requests comment on its proposal to reference Section 10 of ANSI/CTA–2037–C for the camera photometer and stabilization requirements.

(27) DOE also requests comment on its proposal to reference Section 11.1 of ANSI/CTA–2037–C, for the on mode dynamic luminance and power measurement. Specifically, DOE requests comment on using the brightest preset picture setting measurement with ABC turned off for the AEC calculation, regardless of its default setting.

(28) DOE requests stakeholders to provide any additional data and information regarding the repeatability of the standby mode test when connected to smart wake functions, the ability to consistently wake the UUT using smart wake functionality, and the representativeness of the standby mode test, if a wake test is not included at the end of the standby mode duration.

(29) DOE requests comment on its proposal to reference Section 11.2 of ANSI/CTA–2037–C to measure the power consumption in standby mode with some additional specifications. DOE also requests comment on its proposal to reference Section 9.11 of ANSI/CTA–2037–C for conducting the wake tests at the completion of standby mode.

(30) DOE requests comment on the revisions that are under consideration for the standby mode test by the CTA working group.

(31) DOE requests comment on whether it is appropriate to differentiate the standby mode power consumption of TVs that can be powered on using any of the three specified methods versus those that cannot be powered on using the smart wake features. DOE also requests comment on whether there would be any benefit to differentiating between the power consumption of such TVs.

(32) DOE requests comment on whether the parameters 'standby smart wake' and 'standby internet' are appropriate or if it should consider other parameters, such as 'standby-active, high' and 'standby-active, low', respectively.

(33) For TVs that do not meet the stability criteria of the standby mode measurement, DOE requests comment on measuring power consumption for 240 minutes and using the average power consumption over the last two-thirds of the measurement period as the standby-active mode measurement.

(34) DOE requests comment on its proposal to remove the off mode test from appendix H.

(35) DOE requests comment on its proposed calculations for the average on mode power consumption and AEC.

(36) DOE requests comment on any aspect of the estimated one-time testing costs, annually additional incremental testing costs, or the estimated equipment costs associated with these proposed test procedure amendments; including the number of TV basic models, the amount of time needed to conduct the proposed test procedure amendments, the amount of time needed to conduct the existing DOE test procedures, or the costs associated with the equipment necessary to conduct the proposed test procedure amendments.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.25 by revising paragraphs (a)(2)(ii), and (a)(2)(iii)(A) and (B) to read as follows:

§ 429.25 Television sets.

(a) * * *

(2) * * *

(ii) Any represented annual energy consumption of a basic model shall be determined by applying the AEC calculation in section 6.1 of appendix H to subpart B of part 430 of this chapter to the represented values of power consumption as calculated pursuant to paragraph (a)(2)(i) of this section.

(iii) * * *

(A) For power consumption in the on and standby modes, the represented value shall be rounded according to the

accuracy requirements specified in section 2.2 of appendix H to subpart B of part 430 of this chapter.

(B) For annual energy consumption, the represented value shall be rounded according to the rounding requirements specified in section 6.2 of appendix H to subpart B of part 430 of this chapter.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Amend § 430.3 by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (m) through (v) as paragraphs (n) through (w), respectively;
■ c. Adding new paragraph (m);
■ d. Removing newly redesignated paragraph (p)(4) and, redesignating newly redesignated paragraphs (p)(5) through (9) as paragraphs (p)(4) through (8), respectively; and
■ e. Revising newly redesignated paragraph (o)(5);

The addition and revisions read as follows:

§ 430.3 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, the U.S. Department of Energy (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: 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/appliance-and-equipment-standards-program.* 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.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(m) *CTA.* Consumer Technology Association, 1919 S. Eads Street, Arlington, VA 22202, (703) 907–7600, or go to *www.cta.tech.*

(1) ANSI/CTA–2037–C, *Determination of Television Set Power Consumption,* CTA approved October 2021; IBR approved for appendix H to subpart B.

(2) [Reserved]

* * * * *

(p) * * *

(5) IEC 62301 (''IEC 62301''), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01), IBR approved for appendices C1, D1, D2, F, G, I, J2, N, O, P, Q, X, X1, Y, Z, BB, and CC to subpart B.

* * * * *

■ 5. Amend § 430.23 by revising paragraph (h) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(h) *Television sets.* The power consumption of a television set, expressed in watts, including on and standby modes, shall be measured in accordance with sections 5.2 and 5.3 of appendix H of this subpart, respectively. The annual energy consumption, expressed in kilowatt-hours per year, shall be measured in accordance with section 6 of appendix H of this subpart.

* * * * *

■ 6. Revise Appendix H to subpart B of part 430 to read as follows:

Appendix H to Subpart B of Part 430—Uniform Test Method for Measuring the Power Consumption of Television Sets

Note: Before [*date 180 days following publication of a final rule*], any representations made with respect to the energy use or energy efficiency of a television must be based upon results generated under this appendix as it appeared in 10 CFR part 430 edition revised as of January 1, 2021 or this appendix. Beginning [*date 180 days following publication of a final rule*] any representations made with respect to the energy use or efficiency of a television must be based upon results generated under this appendix. Given that beginning [*date 180 days after publication of a final rule*], representations with respect to the energy use or efficiency of televisions must be made in accordance with tests conducted pursuant to this appendix, manufacturers may wish to begin using this test procedure as soon as possible.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, ANSI/CTA–2037–C in its entirety. However, only enumerated provisions of ANSI/CTA–2037–C are applicable to this appendix, as follows:

0.1 ANSI/CTA–2037–C: Determination of Television Set Power Consumption

(a) Sections 5.1 and 5.2 as referenced in section 1 of this appendix;
(b) Sections 7.1.1 through 7.2 as referenced in section 2 of this appendix;
(c) Sections 7.3 through 8.2 as referenced in section 3 of this appendix;
(d) Sections 9.1 through 9.11 as referenced in section 4 of this appendix; and
(e) Sections 10 through 11.2 as referenced in section 5 of this appendix;

1. Definitions and Symbols

1.1. *Definitions.* The following terms are defined according to Section 5.1 of ANSI/CTA–2037–C.

(a) Automatic brightness control
(b) Brightest selectable picture setting
(c) Default preset picture setting
(d) Dynamic Luminance
(e) Energy-Efficient-Ethernet
(f) Filmmaker Mode
(g) Forced menu
(h) HDR10
(i) High Dynamic Range
(j) Home configuration
(k) Hybrid Log Gamma (HLG)
(l) Illuminance
(m) Luminance
(n) Main battery
(o) Motion-Based Dynamic Dimming
(p) Neutral density filter
(q) Off Mode
(r) On Mode
(s) Preset picture setting
(t) Quick start
(u) Snoot
(v) Standby-Active Mode
(w) Standby-Passive Mode
(x) Wake-By-Remote-Control-App
(y) Wake-By-Smart-Speaker
(z) Wake-On-Cast

1.2. *Symbol usage.* The symbols and abbreviations in Section 5.2 of ANSI/CTA–2037–C apply to this test procedure.

2. Test Equipment

2.1. *AC Power Supply.* The AC power supply shall be setup according to the requirements in Section 7.1.1 of ANSI/CTA–2037–C. Additionally, the following requirement is also applicable:

2.1.1. *AC Power Supply Usage.* The AC power supply shall be used to power only the unit under test (UUT). The camera photometer and ABC lamp may be powered by mains electricity.

2.2. *Power Meter.* The power meter shall be setup and used according to the requirements in Section 7.1.2 of ANSI/CTA–2037–C.

2.3. *Illuminance Photometer.* The illuminance photometer shall be setup and used according to Section 7.1.3 of ANSI/CTA–2037–C.

2.4. *Camera Photometer.* The camera photometer shall be setup and used according to Section 7.1.4 of ANSI/CTA–2037–C.

2.5. *Media Player and Storage Device.* The test media shall be stored and displayed using the equipment outlined in Sections 7.1.5, 7.1.6. and 7.1.7 of ANSI/CTA–2037–C.

2.6. *Network-Related Equipment.* The networking equipment shall be setup and used according to Section 7.1.8 of ANSI/CTA–2037–C.

2.7. *ABC Light Source.* The ABC light source shall be setup and used according to Section 7.1.9 of ANSI/CTA–2037–C.

2.8. *Test Signals.* The test signals used for on mode power consumption shall be as specified in Section 7.2 of ANSI/CTA–2037–C.

3. Test Setup

3.1. *Environmental Conditions.* The environmental conditions of the test room shall meet the requirements set in Section 7.3 of ANSI/CTA–2037–C.

3.2. *Ambient Light Conditions.* The ambient light conditions of the test room shall meet the requirements set in Section 7.4 of ANSI/CTA–2037–C.

3.3. The UUT and all associated test equipment shall be setup according to Sections 8.1 and 8.2 of ANSI/CTA–2037–C.

4. Test Configuration

4.1. *UUT Firmware Update.* The UUT firmware shall be updated according to the requirements specified in Section 9.1 of ANSI/CTA–2037–C.

4.2. *Initial Setup.* The TV shall be initially setup following the requirements in Section 9.2 of ANSI/CTA–2037–C.

4.3. *Media Provision.* The test media shall be provided according to the requirements in Section 9.3 of ANSI/CTA–2037–C.

4.4. *Sound Level Adjustments.* The sound level of the UUT shall be set according to Section 9.4 of ANSI/CTA–2037–C.

4.5. *Video Aspect Ratio.* The video aspect ratio shall be setup according to Section 9.5 of ANSI/CTA–2037–C.

4.6. *Identification of the Default SDR and HDR10 Preset Picture Settings.* The identification of the default SDR and HDR10 preset picture settings shall be conducted as specified in Section 9.6 of ANSI/CTA–2037–C.

4.7. *Motion-Based Dynamic Dimming.* Motion-based dynamic dimming shall be setup according to Section 9.7 of ANSI/CTA–2037–C.

4.8. *Identification of the Brightest Preset Picture Setting.* The identification of the brightest preset picture setting shall be conducted using Section 9.8 of ANSI/CTA–2037–C. Additionally, ensure that ABC is disabled while identifying the brightest preset picture setting.

4.9. *Quick Start.* Quick start shall be configured and setup according to Section 9.9 of ANSI/CTA–2037–C.

4.10. *Network Connections.* Network connections shall be configured as specified in Section 9.10 of ANSI/CTA–2037–C.

5. Test Conduct

5.1. *Camera Configuration and UUT Stabilization.* Before testing is conducted the UUT and camera photometer shall be setup and stabilized according to Section 10 of ANSI/CTA–2037–C.

5.2. *On Mode Test.* Conduct the on mode test according to Section 11.1 of ANSI/CTA–2037–C, including the following additions, and record power consumption as noted below:

5.2.1. *Default SDR preset picture setting.*

5.2.1.1. Record the average power consumption with ABC off at the default backlight level as $P_{Default_ABCoff}$.

5.2.1.2. For UUTs with ABC disabled by default in the default SDR preset picture setting, record the average power consumption with ABC off at backlight level set to 20 percent of its maximum level as $P_{Default_ABCoff_20\%backlight}$.

5.2.1.3. For UUTs with ABC enabled by default in the default SDR preset picture setting, record the average power consumption at 140, 50, 17, and 4 lux as $P_{Default_140}$, $P_{Default_50}$, $P_{Default_17}$, and $P_{Default_4}$, respectively.

5.2.1.4. Calculate the default SDR preset picture setting average power consumption as follows:

$P_{Default} = P_{Default_ABCoff}$ for UUTs with ABC disabled in the default SDR preset picture setting, and

$P_{Default} = (P_{Default_140} + P_{Default_50} + P_{Default_17} + P_{Default_4})/4$ for UUTs with ABC enabled in the default SDR preset picture setting.

5.2.2. *Brightest SDR preset picture setting.*

5.2.2.1. Record the average power consumption with ABC off at the default backlight level as $P_{Brightest_ABCoff}$.

5.2.2.2. For UUTs with ABC disabled by default in the brightest SDR preset picture setting, record the average power consumption with ABC off at backlight level set to 20 percent of its maximum level as $P_{Brightest_ABCoff_20\%backlight}$.

5.2.2.3. For UUTs with ABC enabled by default in the brightest SDR preset picture setting, record the average power consumption at 140, 50, 17, and 4 lux as $P_{Brightest_140}$, $P_{Brightest_50}$, $P_{Brightest_17}$, and $P_{Brightest_4}$, respectively.

5.2.2.4. Calculate the brightest SDR preset picture setting average power consumption as $P_{Brightest} = P_{Brightest_ABCoff}$.

5.2.3. *Default HDR10 preset picture setting.*

5.2.3.1. Record the average power consumption with ABC off at the default backlight level as P_{HDR10_ABCoff}.

5.2.3.2. For UUTs with ABC disabled by default in the default HDR10 preset picture setting, record the average power consumption with ABC off at backlight level set to 20 percent of its maximum level as $P_{HDR10_ABCoff_20\%backlight}$.

5.2.3.3. For UUTs with ABC enabled by default in the default HDR10 preset picture setting, record the average power consumption at 140, 50, 17, and 4 lux as P_{HDR10_140}, P_{HDR10_50}, P_{HDR10_17}, and P_{HDR10_4}, respectively.

5.2.3.4. Calculate the default HDR10 preset picture setting average power consumption as follows:

$P_{HDR10} = P_{HDR10_ABCoff}$ for UUTs with ABC disabled in the default HDR10 preset picture setting, and

$P_{HDR10} = (P_{HDR10_140} + P_{HDR10_50} + P_{HDR10_17} + P_{HDR10_4})/4$ for UUTs with ABC enabled in the default HDR10 preset picture setting.

5.2.4. *Calculation of On Mode Power Consumption.* Calculate the on mode power consumption as the average of the power consumption in the default SDR, brightest SDR, and default HDR10 preset picture settings as follows:

$P_{On} = (P_{Default} + P_{Brightest} + P_{HDR10})/3$

Where:

$P_{Default}$ = average power consumption in the SDR default picture setting as specified in section 5.2.1 of this appendix;

$P_{Brightest}$ = average power consumption in the SDR brightest preset picture setting as specified in section 5.2.2 of this appendix; and

P_{HDR10} = average power consumption in the HDR10 default preset picture setting as specified in section 5.2.3 of this appendix.

5.3. *Standby Mode Test.* Conduct the standby mode test as specified in Section 11.2 of ANSI/CTA–2037–C and wake the UUT from standby mode as specified in Section 9.11 of ANSI/CTA–2037–C. The following additional requirements are also applicable:

5.3.1. Wake time measurement, as specified in Section 11.2 of ANSI/CTA–2037–C is not required for the purposes of this appendix.

5.3.2. For the initial network connectivity check specified in Section 9.11 of ANSI/CTA–2037–C, if a network capable UUT cannot be powered on via one of the network connected devices after powering down for 5-seconds, then record the measured average power consumption over the entire duration of the standby test as $P_{standby_internet}$.

5.3.3. At the end of the standby test, power on the UUT as specified in Section 9.11 of ANSI/CTA–2037–C. If a network capable UUT powers on via one of the network connected devices, record the measured average power consumption as $P_{standby_smart_wake}$. If a network capable UUT does not power on via any of the network connected devices, record the measured average power consumption as $P_{standby_internet}$. For UUTs without network capability, record the measured average power consumption as $P_{standby_passive}$.

5.3.4. If the UUT does not meet the stability criteria specified in Section 11.2 of ANSI/CTA–2037–C at the end of the standby mode test duration of 240 minutes, average the power consumption during the last two-thirds of the measurement period and record this value as the standby power measurement using the variables as defined in section 5.3.3 of this appendix.

6. Calculation of Annual Energy Consumption

6.1. *Calculation.* The annual energy consumption (AEC) of the TV shall be calculated using on and standby mode power consumption values as determined pursuant to sections 5.2 and 5.3, respectively, of this appendix as follows:

$AEC = 365 * (P_{on} * H_{on} + P_{standby_smart_wake} * H_{standby_smart_wake} + P_{standby_internet} * H_{standby_internet} + P_{standby_passive} * H_{standby_passive})/1000$

Where:

P_{on} = average on mode power consumption as calculated in section 5.2 of this appendix;

H_{on} = hours per day spent in on mode as specified in Table 1 of this appendix;

$P_{standby_smart_wake}$ = average standby mode power consumption for UUTs with smart wake capability as calculated in section 5.3 of this appendix;

$H_{standby_smart_wake}$ = hours per day spent in standby mode for UUTs with smart wake capability as specified in Table 1 of this appendix;

$P_{standby_internet}$ = average standby mode power consumption for UUTs with network capability without smart wake capability as calculated in section 5.3 of this appendix;

$H_{standby_smart_wake}$ = hours per day spent in standby mode for UUTs with network capability without smart wake capability as specified in Table 1 of this appendix;

$P_{standby_passive}$ = average standby mode power consumption for UUTs without network capability as calculated in section 5.3 of this appendix;

$H_{standby_passive}$ = hours per day spent in standby mode for UUTs without network capability as specified in Table 1 of this appendix;

365 = conversion factor from daily to yearly; and

1000 = conversion factor from watts to kilowatts

TABLE 1—HOURLY WEIGHTINGS

	H_{on}	$H_{standby_smart_wake}$	$H_{standby_internet}$	$H_{standby_passive}$
Standby smart wake	5	19	0	0
Standby internet	5	0	19	0
Standby-passive	5	0	0	19

6.2. *Rounding.* The calculated AEC value shall be rounded as follows:

6.2.1. If the calculated AEC value is 100 kWh or less, the rated value shall be rounded to the nearest tenth of a kWh.

6.2.2. If the calculated AEC value is greater than 100 kWh, the rated value shall be rounded to the nearest kWh.

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